(9)

No. 06-116
Title: Alicia G. Limtiaco, Attorney General of Guam, Petitioner
v.
Felix P. Camacho, Governor of Guam
Docketed: July 25, 2006
Lower Ct: Supreme Court of Guam
Case Nos.: (CRQ03-001)
Decision Date: July 23, 2003

Questions Presented

Date	Proceedings and Orders
May 24 2006	Application (05A1099) to extend the time to file a petition for a writ of certiorari from June 4, 2006 to August 3, 2006, submitted to Justice Kennedy.
May 31 2006	Application (05A1099) granted by Justice Kennedy extending the time to file until July 19, 2006.
Jul 19 2006	Petition for a writ of certiorari filed. (Response due August 24, 2006)
Aug 24 2006	Brief of respondent Felix P. Camacho, Governor of Guam in opposition filed.
Sep 5 2006	Reply of petitioner Douglas B. Moylan, Attorney General of Guam filed. (Distributed)
Sep 6 2006	DISTRIBUTED for Conference of September 25, 2006.
Sep 26 2006	Petition GRANTED in addition to the Question presented by the petition, the parties are directed to brief and argue the following question: "Whether the time for filing a petition for writ of certiorari from this Court was tolled while a petition for writ of certiorari or writ of certiorari with respect to the same judgment was pending before the United States Court of Appeals for the Ninth Circuit.".
Oct 31 2006	SET FOR ARGUMENT ON Monday, January 8, 2007.
Nov 13 2006	Joint appendix filed.
Nov 13 2006	Brief of petitioner Douglas B. Moylan, Attorney General of Guam filed.
Nov 17 2006	CIRCULATED.
Dec 8 2006	Record received from Supreme Court of Guam. (1 box)
Dec 18 2006	Brief of respondent Felix P. Camacho, Governor of Guam filed. (Distributed)
Dec 29 2006	Reply of petitioner Douglas B. Moylan, Attorney General of Guam filed. (Distributed)
Jan 8 2007	Argued. For petitioner: Seth P. Waxman, Washington, D.C. For respondent: Beth S. Brinkmann, Washington, D.C.
Jan 10 2007	Lodging of petitioner, submitted to and approved by Clerk of Court, consisting of 20 copies of excerpts of legislative history materials.

DISTRIBUTED.

Jan 11 2007 Lodging of respondent, submitted to and approved by Clerk of Court, consisting of 20 copies of orders, regulations, and laws. DISTRIBUTED.

Supreme Court, U.S.
FILED
06-116 JUL 19 2006
OFFICE OF THE CLERK

No. 06-

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,
Petitioner,

v.

FELIX P. CAMACHO, GOVERNOR OF GUAM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Supreme Court of Guam erred in interpreting the phrase "aggregate *tax* valuation" in the Guam Organic Act's debt-limitation provision, 48 U.S.C. § 1423a (emphasis added), as tying the limit on borrowing by the Guam territorial government to the full value of property on Guam rather than to the assessed value used for purposes of taxation.

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IN THE

Supreme Court of the United States

No. 06-

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM,
Petitioner,

v.

FELIX P. CAMACHO, GOVERNOR OF GUAM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

OPINIONS BELOW

The decision of the Supreme Court of Guam (Pet. App. 1a-35a) is unreported, but is available at 2003 WL 21697180. The order of the Court of Appeals for the Ninth Circuit, which at the time possessed jurisdiction to review decisions of the Guam Supreme Court, granting petitioner's petition for a writ of certiorari (Pet. App. 37a) is unreported. The Court of Appeals' order dismissing the case for lack of jurisdiction in light of Congress's shifting of certiorari jurisdiction over decisions of the Guam Supreme Court to this Court (Pet. App. 39a) is unreported.

JURISDICTION

Because this petition seeks review of a decision of the Supreme Court of Guam, this Court has jurisdiction pursuant to 28 U.S.C. § 1257 and 48 U.S.C. § 1424-2 (as amended in 2004). Pet. App. 48a.

The decision of the Guam Supreme Court was issued on July 23, 2003. This petition is nonetheless timely because, at the time of the Guam Supreme Court's decision, the Court of

Appeals for the Ninth Circuit, not this Court, possessed exclusive jurisdiction to review decisions of the Guam Supreme Court, *see* 48 U.S.C. § 1424-2 (2000); *White* v. *Klitzkie*, 281 F.3d 920, 925 (9th Cir. 2002), and petitioner filed a timely petition for certiorari with the Ninth Circuit, which was granted. On October 30, 2004, after the Court of Appeals had granted certiorari and the appeal had been briefed and argued, Congress amended 48 U.S.C. § 1424-2 to shift certiorari jurisdiction over decisions of the Guam Supreme Court from the Ninth Circuit to this Court. But the Ninth Circuit only concluded that the amendment applied to pending cases in January 2006, *see Santos* v. *People of Guam*, 436 F.3d 1051 (9th Cir. 2006), and only dismissed the appeal in this case for lack of jurisdiction on that ground on March 6, 2006. Petitioner promptly filed a timely request for extension of time within which to file a petition for certiorari with this Court on May 24, 2006, which Justice Kennedy granted on May 31.

Although this Court has held that the 90-day time limit for filing certiorari petitions established in 28 U.S.C. § 2101(c) is "mandatory and jurisdictional," *Missouri* v. *Jenkins*, 495 U.S. 33, 45 (1990), it has recognized that the start of the 90-day period is tolled if the petitioner files a timely petition for rehearing with the court below, the court below decides to grant an untimely rehearing petition, or the court below directs the parties to address whether rehearing should be ordered because each of these acts "raise[s] the question whether the court will modify the judgment and alter the parties' rights," *Hibbs* v. *Winn*, 542 U.S. 88, 97 (2004). Here, petitioner's timely filing of a certiorari petition with the Court of Appeals, the Court of Appeals' grant of certiorari to review the Guam Supreme Court's decision, and the Court of Appeals' retention of the appeal after the amendment of 48 U.S.C. § 1424-2 on October 30, 2004 had the same effect of "'suspend[ing] the finality of the [Guam Supreme Court's] judgment, pending [the Court of Appeals'] further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.'" *Jenkins*, 495 U.S. at 46 (quoting *Department of*

Banking v. *Pink*, 317 U.S. 264, 266 (1942)). Thus, petitioner's filing of a certiorari petition with the Court of Appeals and the Court of Appeals' granting of the petition should be treated as having the same effect that the filing of a petition for rehearing has on a decision of a Court of Appeals, namely of "suspend[ing]" the underlying judgment now sought to be reviewed. *Jenkins*, 495 U.S. at 46; *cf. Leishman* v. *Associated Wholesale Elec. Co.*, 318 U.S. 203, 205-206 (1943); *Pink*, 317 U.S. at 266. While the Court of Appeals, having properly granted certiorari, considered the case, "there [was] no 'judgment' to be reviewed" by this Court, *Jenkins*, 495 U.S. at 46, and the 90-day period established by 28 U.S.C. § 2101(c) should be considered to have been tolled.[1]

STATUTORY PROVISIONS INVOLVED

Section 11 of the Organic Act of Guam states in pertinent part:

> [t]axes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*,

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[1] A further consideration supporting a finding that this petition is timely is the presumption recognized by this Court that Congress intends decisions of territorial courts to be subject to review by at least one Article III court. In *Territory of Guam* v. *Olsen*, 431 U.S. 195 (1977), this Court noted that "Congress has consistently provided for appellate review by Art. III courts of decisions of local courts of the Territories. What history there is points to a purpose to create a similar system for Guam." *Id.* at 203-204. Without a "clear signal," *id.* at 203, that Congress intended to permit elimination of review of the Guam courts by any Article III court, this Court was "unwilling to say that Congress made an extraordinary exception in the case of Guam," *id.* at 204. Moreover, the Court noted, "we should hesitate to attribute such a purpose to Congress since a construction that denied Guam litigants access to Art. III courts for appellate review of local-court decisions might present constitutional questions." *Id.*

> bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a (first and third emphases added).

Other relevant statutory provisions are set forth in the appendix to this petition. Pet. App. 41a-65a.

INTRODUCTION AND STATEMENT

This is a case about maintaining respect for Congressional limitations on territorial governments and ensuring that those governments remain accountable to their own U.S. citizen electorates as well. The case concerns the provision in the Organic Act of Guam, the federal statute that serves as the territory's constitution, which caps the amount of debt the government of Guam can assume in order to prevent government insolvency and to protect the territory's residents from oppressive taxation. Petitioner, the Attorney General of Guam, acting pursuant to his statutory duty to review all government contracts for legality, has refused to approve bond issues authorized by the territorial legislature and respondent Governor that would push the territory's indebtedness above the limit prescribed by Congress in the Organic Act. In a decision that validated the excessive levels of borrowing sought by respondent, the Supreme Court of Guam misinterpreted the debt-limitation provision in contravention of both its text and undisputed purpose. Absent review by this Court, no Article III court will address this important federal question that not only will shape Guam's fiscal future but may also influence the financial health of other territorial governments, which operate under similar federally mandated debt ceilings.

1. Guam, an island of approximately 200 square miles located in the west central Pacific Ocean, is an unincorporated territory of the United States. Acquired in the Spanish-American War, the island was administered by the Navy from 1898 to 1950. *See Ngiraingas* v. *Sanchez*, 495 U.S. 182, 186 (1990). In 1950, Congress enacted the Organic Act of Guam, 48 U.S.C. § 1421 *et seq.*, which serves as Guam's constitution, *see* 48 U.S.C. § 1423a; *Haeuser* v. *Department of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996). The Organic Act defines the structure and powers of Guam's territorial government and guarantees the people of Guam, who are U.S. citizens, the fundamental individual rights enshrined in the Bill of Rights. The Organic Act is designed to secure for the people of Guam the benefits of a democratically accountable local government constrained by the rule of law. *See* S. Rep. No. 81-2109, at 1-2 (1950).

The Governor of Guam is popularly elected to a four-year term. 48 U.S.C. § 1422. The Attorney General of Guam, the territory's chief legal officer, 48 U.S.C. § 1421g(d)(1); 5 Guam Code Ann. § 3102, is also directly elected to a four-year term, 48 U.S.C. § 1421g(d)(2); 5 Guam Code Ann. § 30101(a), and, unlike other executive officials, may not be removed from office by the Governor, 48 U.S.C. §§ 1422, 1421g(d)(2); 5 Guam Code Ann. § 30101 (a), (c). Guam law provides that the Governor may not execute any contracts on behalf of the territorial government without the Attorney General's approval of their legality. 5 Guam Code Ann. § 22601.

Section 11 of the Organic Act empowers the Guam Legislature to enact laws on "all rightful subjects of legislation" not inconsistent with the Organic Act or other federal laws applicable to Guam. 48 U.S.C. § 1423a. It then immediately limits the Guam Legislature's authority in one crucial respect: excessive borrowing. Section 11 specifically mandates that

> [t]axes and assessments on property, internal revenues, sales, license fees and royalties for franchises, privileges, and concessions may be imposed for

> purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a (first and third emphases added).

While Congress strictly limited the amount of debt the territorial government can assume by linking the government's power to incur debt to its power to tax, Congress left the Guam Legislature free to design the details of the territory's taxation system. Consequently, subject to the federal requirement of uniformity, local laws determine what types of property in Guam are taxed and at what rates of assessment. In crafting the local tax structure, the Guam Legislature has opted to exempt certain types of real property from taxation, including government land, land used for educational or religious purposes, and land used in active farming. 11 Guam Code Ann. § 24401. Property is required to be appraised at its full market value, *id.* § 24102(f), and the Department of Revenue and Taxation is required to appraise the taxable property on the island every three years, *id.* § 24306. The assessed or taxable value of real property subject to taxation is set at 35% of its full, appraised value. *Id.* § 24102(f).

2. a. From the early 1990s until recently, Guam's economy suffered a dramatic downturn. The territory's economy has long been driven principally by tourism (especially from Japan) and U.S. military spending. In the early 1990s, the Japanese stock and real estate markets experienced massive declines, which significantly decreased Japanese investment

and tourism in Guam. Military spending in Guam also declined around this time. A series of other, unrelated events—a major earthquake in 1993, two supertyphoons in 1997 and 2002, the 1997 Asian economic crisis, the SARS epidemic, and the September 11, 2001 terrorist attacks—also contributed to the weakening of Guam's economy. In combination, these events have caused a substantial decline in the value of real property on Guam since the early 1990s. One study, for example, calculates that the value of real property on Guam depreciated an average of 81% between 1990 and 2002. *See* W. Nicholas Captain, *Property Information: A Guam Case Study*, Real Estate Issues, Winter 2003, at 18.

b. In 2003, the Guam Legislature concluded that the territorial government had insufficient revenue in its General Fund to pay certain obligations. Pet. App. 2a. (*In re Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Section 11 of the Organic Act of Guam*, 2003 WL 21697180 (Guam July 23, 2003), attached at Pet. App. 1a-35a.). On April 28, 2003, the Legislature passed Public Law 27-19, which authorized the Governor to issue bonds in an amount not to exceed $418,309,857. Pet. App. 2a. The law earmarked $218,309,857 of the borrowing for General Fund expenditures, including tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding payments, general fund vendor payables, and public school repairs. *Id.*; 5 Guam Code Ann. § 1512(a), (m). The law specified that the remaining $200 million in borrowed funds were to be used to pay the debt service on bonds issued a decade earlier. Pet. App. 2a.

Before the Governor could enter into any contracts to issue bonds pursuant to Public Law 27-19, he was required to obtain approval of the contracts' legality from petitioner Attorney General. 5 Guam Code Ann. § 22601. On May 14, 2003, petitioner sent a letter to the Governor and the Speaker of the Legislature indicating that he would not approve any contract to issue bonds pursuant to Public Law

27-19. Pet. App. 3a. Petitioner determined that the borrowing would be illegal on two grounds.

First, the new borrowing would bring the territorial government's indebtedness above the level permitted by the debt-limitation proviso in Section 11 of the Organic Act. Petitioner Attorney General explained that the phrase "aggregate tax valuation" in the proviso should be understood to refer to the assessed value of property used for purposes of taxation (which at present is fixed by law at 35% of appraised value) rather than the full, appraised value. Petitioner's view accorded with the position adopted several years earlier by the Legislative Counsel, the Legislature's own internal legal adviser. Pet. App. 8a; 2 Guam Code Ann. § 1112 (providing for Legislative Counsel).

Second, even if the Legislature were to rely on appraised value, petitioner opined, it was improper for the Legislature to use the 2002 tax roll to determine that value. Guam law requires a reappraisal of property values every three years, *see* 11 Guam Code Ann. § 24306, but the government had not carried out an appraisal since 1993, *see* Pet. App. 3a. Petitioner acknowledged that the territory's Board of Equalization had made some adjustments to the tax rolls in each of the intervening years, but he noted that property values had declined significantly since 1993 because of the island's major economic downturn and that the 2002 tax roll did not fully reflect this depreciation.

After a further exchange of letters, the Legislature responded on June 25, 2003 by enacting Public Law 27-21, which did two things intended to validate after the fact the borrowing authorized by Public 27-19. Pet. App. 3a. First, Public Law 27-21 expressed the Legislature's view that the phrase "aggregate tax valuation" in the Organic Act's debt-limitation provision should be understood to mean "one hundred percent (100%) of the appraised value of the property on Guam." *Id.* Second, it provided that when the territorial government fails to conduct the triennial appraisals otherwise required by law, the "last completed" appraisal, regardless of how old, "as supplemented by the annual adjust-

ments" by the Board of Equalization shall be the appraisal used for purposes of taxation. Pet. App. 9a. Because the Legislature's expression of its view concerning the meaning of the Organic Act had no legal significance, *see id.* at 10a, Petitioner continued to refuse to give his approval to any contracts needed to undertake the borrowing authorized under Public Law 27-19.

3. On July 1, 2003, the Governor filed an original declaratory judgment action in the Supreme Court of Guam pursuant to 7 Guam Code Ann. § 4104, which permits the Governor to seek a binding determination of a question of law affecting the operation of the executive branch that is "a matter of great public interest [when] the normal process of law would cause undue delay." *See also In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 WL 187459 (Guam Feb. 7, 2002). The members of the supreme court are appointed by the Governor with the advice and consent of the Legislature and serve ten-year terms. 7 Guam Code Ann. §§ 3103(a), 6101(a). The Governor asked the supreme court to determine whether the borrowing authorized by Public Law 27-19 violated the Organic Act's debt-limitation provision and whether the use of a tax roll unmoored to a recent appraisal as a means of calculating the debt limit was permissible. On the same day that the Governor filed the action, the supreme court invited petitioner to intervene.

The next day, July 2, the court held a "status hearing" at which petitioner contended that determining the propriety of reliance on the 2002 tax roll would require factfinding that the court did not appear to be in a position to undertake. The court declined to establish a procedure for factfinding and established an expedited briefing schedule. The parties were required to file their opening briefs in five days, on July 7, their opposition briefs the next day, and their reply briefs the day after that at 10:00 a.m. The court heard oral argument on July 9, the day after receiving reply briefs.

The supreme court issued its decision on July 23. It concluded that the bonds authorized under Public Law 27-19 did not violate the Organic Act's debt-limitation provision. Pet. App. 2a. The court interpreted the phrase "aggregate tax valuation" in the Organic Act's debt-limitation proviso as referring to full, appraised value rather than the assessed value used for purposes of taxation. The court took the view that "tax valuation" must mean "appraised value" because "all taxes on property must necessarily be based, in the first instance, upon appraised values of the property," *id.* at 14a, though it had to acknowledge elsewhere in the opinion that tax-exempt as well as taxable property was valued in the appraisal process, *id.* at 34a. The court also considered particularly significant the fact that the debt-limitation provision in the Virgin Islands Organic Act used the phrase "aggregate assessed valuation" rather than "aggregate tax valuation." *Id.* at 12a. The court reasoned that if Congress had intended to refer to assessed value in the Guam Organic Act, it would have used the word "assessed" rather than "tax." *Id.*

The court then considered the meaning of the term "property" in the Guam debt-limitation provision. Pet. App. 15a-19a. Having rejected the importance of the link between taxing capacity and the debt limit in interpreting the phrase "aggregate tax valuation," the court now relied on just that consideration in rejecting respondent Governor's position that "property" could include property that is exempt from taxation. *Id.* at 18a-19a. It would be unwise to calculate the debt limit based on non-taxed property, the court explained, because this property does not generate tax revenue. *Id.* The court acknowledged that its reasoning in interpreting the word "property" might be thought to be inconsistent with its analysis of the meaning of the phrase "aggregate tax valuation." *Id.* at 18a n.9.

The court next concluded that the government could use the 2002 tax roll to calculate the current debt limit, even though the government had not conducted the triennial appraisals mandated by Guam law to create the tax roll. Pet.

App. 19a-26a. The court acknowledged that the territorial legislature's post-hoc effort in Public Law 27-21 to relax the triennial appraisal requirement by allowing reliance on tax rolls could have only prospective effect and so could not be used to support the legality of borrowing authorized before its enactment. *Id.* at 21a-22a. But the court nonetheless held that reliance on the 2002 tax roll was proper. The court determined that Guam law mandates triennial appraisals only for purposes of taxation, not for purposes of calculating the debt limit. *Id.* at 22a. The court placed the burden on petitioner to demonstrate that the system used to calculate the values in the tax roll through individual adjustments to the 1993 appraisal levels was arbitrary or capricious and found that petitioner had failed to carry that burden in the one week he had been given to present materials to the court. *Id.* at 25a-26a.

Finally, the court applied its interpretation of the meaning of the debt-limitation proviso to the particular facts of the 2003 borrowing bill and Guam's existing debts. According to the 2002 tax roll, the court found, the total appraised value of taxable property on Guam was $11.1493 billion. Pet. App. 34a. That meant the debt cap stood at $1.11493 billion. *Id.* The court found that the territorial government's existing "public indebtedness" was $378 million. *Id.* On this view, adding the $418,309,857 of debt authorized by Public Law 27-19 would bring the territory's debt to just below $800 million, well within the court's understanding of the cap's level. *Id.* at 34a-35a.

Relying on the figures from the 2002 tax roll, petitioner's interpretation of the debt-limitation proviso would have meant a debt cap of $390.3 million, 35 percent of the $1.11493 billion ceiling calculated by the court. Thus, accepting the court's determination of existing public indebtedness at $378 million, some of the very first bonds issued under authorization in Public Law 27-19 would have pushed the territorial government's indebtedness above the congressionally mandated limit.

4. Petitioner promptly sought review of the Guam Supreme Court's decision before the Court of Appeals for the Ninth Circuit, which at the time possessed jurisdiction to review Guam Supreme Court decisions by writ of certiorari pursuant to 48 U.S.C. § 1424-2 (2000) (Pet. App.47a-48a). The Ninth Circuit granted the petition. *Id.* at 37a. In addition to questioning the Guam Supreme Court's definition of "aggregate tax valuation" in the Organic Act's debt-limitation provision, petitioner challenged the expedited process used by the Guam Supreme Court and its resort to factfinding. The parties submitted full briefing, and the court heard oral argument on May 24, 2004.

On October 30, 2004, Congress amended 48 U.S.C. § 1424-2, shifting certiorari jurisdiction over decisions of the Supreme Court of Guam from the Ninth Circuit to this Court. Act of Oct. 30, 2004, Pub. L. No. 108-378, § 2, 118 Stat. 2206, 2208. On March 6, 2006, the Ninth Circuit dismissed the appeal for lack of jurisdiction on the ground that Congress's removal of the Ninth Circuit's certiorari jurisdiction over the Guam Supreme Court applied to pending appeals. Pet. App. 39a.

5. On May 24, 2006, petitioner requested an extension of time within which to file a petition for certiorari with this Court, which Justice Kennedy granted on May 31, setting the deadline for filing this petition as July 19.

REASONS FOR GRANTING THE PETITION

Petitioner seeks review because the Guam Supreme Court misinterpreted an important provision of federal law—the debt-limitation proviso in the Guam Organic Act—in a way that authorizes levels of public borrowing that may threaten the solvency of the Guam government. The Guam Organic Act limits Guam's "public indebtedness" to "10 per centum of the aggregate tax valuation of the property in Guam." 48 U.S.C. § 1423a (emphasis added). The Guam Supreme Court's equation of "tax valuation" with appraised value, *i.e.*, actual market value, rather than assessed value, defies the debt-limitation provision's plain terms by reading

the word "tax" out of the provision and undermines the provision's purpose, which, as the federal District Court of Guam has explained, is "to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of taxpayers with those debts." *Guam Tel. Auth.* v. *Rivera*, 416 F. Supp. 283, 287 (D. Guam 1976).

Review by this Court is particularly warranted for three reasons. First, because the question presented concerns one of the core powers of a territorial government—its ability to borrow—and the effectiveness of a limitation on that power established by Congress, the question is of great public importance. *See Territory of Alaska* v. *American Can Co.*, 358 U.S. 224, 225 (1959) (petition "granted in view of the fiscal importance of the question to [the territory of] Alaska"); *Puerto Rico* v. *Rubert Hermanos, Inc.*, 309 U.S. 543, 544 (1940) ("The question here in controversy is a matter of great importance to Puerto Rico and involves the power of its legislature to enforce Congressional policies affecting the Island. We therefore brought the case here on a writ of certiorari."). Second, while the resolution of the question will directly affect only the powers of the Guam government, the question is not one of merely local concern. The problem of fiscal crises brought on by excessive borrowing is one that has regularly afflicted other territorial governments. Third, absent review by this Court the important federal question presented will not be addressed by any Article III court, and indeed will have been resolved by the territorial supreme court without even the benefit of significant guiding precedents from any Article III courts. *Cf. Territory of Guam* v. *Olsen*, 431 U.S. 195, 201-202, 204 (1977) (expressing reluctance to interpret Guam Organic Act in way that would permit elimination of review of territorial court decisions by at least one Article III court and suggesting that such elimination would raise constitutional concerns).

I. THE GUAM SUPREME COURT'S DECISION UNDERMINES A CONGRESSIONALLY MANDATED RESTRICTION ON THE POWERS OF THE GUAM GOVERNMENT

The Guam Supreme Court's interpretation of the Organic Act's debt-limitation provision ignores its plain language and disregards its central purposes of keeping territorial government spending and taxation in line and of ensuring that the territorial legislature and respondent governor remain democratically accountable for their fiscal policy decisions.

A. The Guam Supreme Court's Interpretation Conflicts with the Wording of the Guam Organic Act

Interpretation of the debt-limitation provision must of course begin with the words of the provision themselves. *See, e.g., Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). The Guam Organic Act authorizes the Guam Legislature to issue bonds and other obligations "when necessary to anticipate taxes and revenues ... *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam." 48 U.S.C. § 1423a. By interpreting "aggregate tax valuation" to mean appraised value, that is, full market value, the Guam Supreme Court read the crucial modifier "tax" out of the debt-limitation provision and so violated the well-established canon that wherever possible, courts must "construe a statute to give every word some operative effect." *Cooper Indus., Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 167 (2004).

If Congress had intended to set the debt ceiling with reference to the full value of all property on Guam, it could simply have said "aggregate valuation." Instead, it included the qualifier "tax," with the evident purpose of tying the level of permissible indebtedness to the valuation of property used for purposes of taxation, that is, the assessed value. *Cf. Duncan* v. *Walker*, 533 U.S. 167, 169, 174-175 (2001) (holding that a statute referring to "State post-conviction or other collateral review" did not apply to federal habeas corpus review because reading the statute oth-

erwise would render the modifying term "State" insignificant and thus fail to fulfill the Court's duty "to give effect, if possible, to every clause and word of a statute"). In most jurisdictions, as Congress would certainly have been aware, the value of property for purposes of taxation is set considerably below the full or appraised value. *See, e.g.*, Ga. Code Ann. § 48-5-7(a) (providing "taxable tangible property shall be assessed at 40 percent of its fair market value"); *Breslow* v. *School Dist.*, 182 A.2d 501, 504 (Pa. 1962) ("It is a matter of common knowledge that in nearly every township, county and city in Pennsylvania, property is assessed for tax purposes lower than its market value."). That pattern was predictably followed in Guam. *See* 11 Guam Code Ann. § 24102(f) (defining "value" of real property for purposes of taxation as 35% of appraised value). Linking the permissible level of public indebtedness to the value of property used for imposing taxes has the clear effect of keeping the territorial government's borrowing in line with its ability to repay the debt through tax revenues.

The Guam Supreme Court's error is thrown into relief by state supreme court decisions interpreting debt-limitation provisions lacking a qualifier such as "tax" or "assessed" before the word "value" or "valuation." In construing these unqualified debt-limitation clauses, state high courts have consistently taken the absence of a qualifying adjective as a clear indication that full appraised value rather than assessed value was intended. In *Board of Education* v. *Passey*, 246 P.2d 1078 (Utah 1952), for example, the Utah Supreme Court had to interpret a constitutional debt ceiling that limited municipal borrowing to four percent of "the value of the taxable property" in the municipality. The defendant school board clerk refused to sign bonds issued by the board, claiming that doing so would violate the constitutional restriction because the amount of the bond issue exceeded four percent of the assessed value of the property in the municipality. The Utah Supreme Court rejected the clerk's view, reasoning that in the constitutional debt cap "[t]he word 'value' is not limited or qualified by any adjectives. It does not read 'assessed value' or specify any other

particular kind of value. The word 'value' standing by itself can have only one meaning, *viz.* the full worth or actual value—not a fractional share thereof." *Id.* at 1079. Other courts have followed the same sensible logic. *See Hansen* v. *City of Hoquiam*, 163 P. 391, 392 (Wash. 1917); *N.W. Halsey & Co.* v. *City of Belle Plaine*, 104 N.W. 494, 495-497 (Iowa 1905). Just as the absence of a qualifier before "valuation" indicates legislative intent to tie a debt restriction to full, that is, appraised, value, the presence of a qualifier such as "tax" (or "assessed") shows a legislative intent that the debt limit be tied to the typically lower assessed value used for purposes of taxation.

The Guam Supreme Court suggested that it was not ignoring the significance of the word "tax" altogether because, in its view, that term could be understood to limit the types of property upon whose value the debt limit was to be calculated to taxable property. *See* Pet. App. 17a-19a. But if Congress had intended the word "tax" (or rather "taxable") to qualify the meaning of "property" rather than defining the kind of valuation from which the debt limitation must be calculated, it could easily have made its intention clear by placing "taxable" before "property" rather than "tax" before "valuation." The use of the term "taxable property" in that way is common enough in state constitutional debt caps, *see, e.g.*, Ga. Const. of 1983, art. IX, § V, ¶ I(a) ("The debt incurred by any . . . political subdivision of this state . . . shall never exceed 10 percent of the assessed value of all taxable property within such . . . subdivision . . . ."); Wyo. Const. of 1889, art. 16, § 5 (same), and the same term appears in the debt-limitation provision in the Virgin Islands Organic Act, which, as the Guam Supreme Court stressed, was enacted by Congress just the year before the Guam Organic Act, *see* Pet. App. 12a. The Guam Supreme Court offered no explanation (or legislative history evidence) for the roundabout locution its interpretation would attribute to the Guam Organic Act's drafters.

The link between the Guam Organic Act's debt limitation provision and valuation of property for purposes of

taxation is drawn not only by the presence of the word "tax" immediately before the word "valuation," but also by the introductory phrase allowing borrowing only "when necessary to anticipate taxes and revenues." 48 U.S.C. § 1423a. That phrase emphasizes that borrowing by the Guam Legislature is permissible only when the Legislature determines that the debt incurred can be paid off from existing or reasonably anticipatable sources of tax revenue. *See, e.g.*, *Hodges* v. *Crowley*, 57 N.E. 889, 892 (Ill. 1900); *cf. Wein* v. *State*, 347 N.E.2d 586, 591 (N.Y. 1976). If public indebtedness must be paid off from tax revenue, it only makes sense that the level of indebtedness should be tied to the level of taxation imposed on property, not to the value of the property itself. The establishment of that link is precisely what the debt-limitation proviso's reference to "aggregate tax valuation" accomplishes.

The Guam Supreme Court refused to interpret the qualifier "tax" as setting Guam's public borrowing ceiling with reference to the assessed value of property on Guam in significant part because the debt-limitation provision in the Virgin Islands' Organic Act includes the word "assessed" rather than "tax" before "valuation." *See* Pet. App. 12a. The Virgin Islands' provision was enacted just a year before Guam's, and the court reasoned that Congress would not have used the word "assessed" in one organic act and "tax" in the other if it had intended both terms to mean "assessed." *Id.* As the decisions by state supreme courts interpreting unqualified debt-limitation provisions suggest, the presence of either qualifier, whether "tax" or "assessed," is more significant than the particular qualifier chosen, in demonstrating that the legislature intended to restrict borrowing by tying it to the valuation of property used for purposes of taxation rather than full or appraised value. But, in any event, the Guam Supreme Court's comparison of the Guam and Virgin Islands provisions ignores the evolution of the Virgin Islands Organic Act. Once that evolution is taken into account, Congress' use of different qualifiers in the two organic acts only demonstrates their equivalence, not their divergence.

In 1949 Congress amended the Virgin Islands Organic Act to authorize the Virgin Islands government, for certain purposes, to issue bonds "*Provided*, That no public indebtedness . . . shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in . . . the Virgin Islands." 48 U.S.C. § 1403; *see id.* § 1574(b)(ii)(A). But unlike the Guam Act, the Virgin Islands Organic Act, which was originally enacted in 1936, contained from the start a separate provision mandating that "all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property." 48 U.S.C. § 1401a; *see Bluebeard's Castle, Inc.* v. *Government of the V.I.*, 321 F.3d 394, 396 (3d Cir. 2003).[2] Because of this separate federal requirement, if the debt-limitation provision added to the Virgin Islands Act in 1949 had defined the limitation with reference to "aggregate tax valuation," that might well have been understood to mean actual value. Thus, in the Virgin Islands Act, it was necessary for Congress to insert the word "assessed" before "valuation" in the debt-limitation proviso in order to make clear that the debt ceiling was tied to the assessed value of property, not its full, appraised value.[3] When Congress enacted the Guam Or-

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[2] The provision states that "[f]or the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put." 48 U.S.C. § 1401a. Congress established this requirement because prior to this time land in the Virgin Islands had been appraised for tax purposes at different rates based on the particular use of the land. *Bluebeard's Castle*, 321 F.3d at 401. Uncultivated land in particular had been taxed at a low rate, thus creating a disincentive to development of much land on the islands. *Id.*

[3] Indeed, the bill containing the Virgin Islands debt-limitation provision had originally used the phrase "aggregate tax valuation." The House committee that considered the bill amended the phrase to use the word "assessed" in response to a recommendation from the Department of the Interior. But the change was characterized as simply a "perfecting

ganic Act the following year, there was no similar need to use the word "assessed." The adjective "tax" could be used to achieve the same result.

B. The Guam Supreme Court's Interpretation Undermines the Purpose of the Debt-Limitation Provision

The Guam Supreme Court's interpretation flies in the face not only of the debt ceiling's terms but also of its core purpose: to keep borrowing by the Guam Legislature within limits tied to the legislators' willingness to impose taxes on the people who elect them. By fixing that link in Guam's federal constitution, the debt-limitation proviso ensures that the Legislature cannot engage in levels of borrowing that would threaten the territorial government's solvency. It prevents the Legislature from excessively postponing the enactment of taxes needed to keep the government within its means and thus throwing onto the backs of future taxpayers oppressive levels of taxation. And, perhaps most fundamentally, the debt-limitation proviso thereby ensures that the members of the Legislature (and the Governor) remain accountable to people who elect them and whom they serve.

In all these respects, the Guam Organic Act's borrowing cap resembles its state constitutional counterparts. As state supreme courts have repeatedly held, those state constitutional limitations, like the Guam proviso, are intended "to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation." *City of Hartford* v. *Kirley*, 493 N.W.2d 45, 51 (Wis. 1992); *see* 15 McQuillin, *The Law of Municipal Corporations* § 41:1 (3d ed. 2005) (constitutional debt limits established "as a limit to taxation and as a protection to taxpayers; to maintain municipal solvency") (footnote omitted). They serve "to prevent municipalities from

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amendment," *i.e.*, one not designed to change the statute's intended meaning. H.R. Rep. No. 81-682, at 2, 3 (1949).

loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond defined limits, they must pay as they go." *Keller* v. *City of Scranton*, 49 A. 781, 782 (Pa. 1901); *see City of Hartford*, 493 N.W.2d at 51 ("seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations"); 15 McQuillin, §41:3 (same). They aim to restrain "the lust of a greedy and overindulgent . . . government." *Allen* v. *Van Buren Township*, 184 N.E.2d 25, 31 (Ind. 1962).

Aware of these holdings, the Guam Supreme Court at least acknowledged the debt-limitation proviso's purpose of keeping excessive borrowing in check. *See* Pet. App. 6a-7a. But it went on to disregard that fundamental purpose in reaching its view of the proviso's meaning. The Guam Supreme Court's interpretation leaves the territorial Legislature free to engage in much greater borrowing—with the present assessment rate of 35%, nearly three times as much borrowing—as would the interpretation urged by petitioner. And the Guam Supreme Court's reading leaves the level of borrowing untethered to the Legislature's willingness to impose taxes on voters. It is telling in this regard that when the Legislature, apparently displeased with petitioner's unwillingness to approve the excessive borrowing authorized by Public Law 27-19, sought to validate that borrowing, it enacted in effect an advisory law expressing its view that the phrase "aggregate tax valuation" in the debt-limitation should be interpreted to mean 100% of appraised value. *See id.* at 3a. The Legislature could have achieved the intended result of raising the debt ceiling by raising the assessment rate for property taxation from 35% to some higher figure. But doing so would have required taking responsibility with voters for subjecting a greater portion of their property to taxation. In evading acceptance of that responsibility, the Legislature was engaging in just the sort of behavior the debt ceiling was intended to prevent.

The purpose of the debt-limitation proviso, in short, is "to place restraints upon the Governor and Legislature [in

order to] promote fiscal responsibility." *Guam Tel. Auth.*, 416 F. Supp. at 287. To the extent the terms of the proviso are ambiguous, they should be read to serve that core Congressional goal. Instead, the Guam Supreme Court's decision subverts it.

C. The Importance of the Debt-Limitation Proviso's Purpose of Promoting Fiscal Restraint Is Highlighted by the Experience of Other Territories

Guam is one of three U.S. territories with federal organic acts, along with Puerto Rico and the Virgin Islands. Recent fiscal crises experienced by the governments of Guam's fellow territories highlight both the more general significance of territorial debt-limitation provisions and the importance of interpreting such provisions in accord with their central purpose of restraining excessive borrowing.

The Puerto Rican government endured a fiscal crisis when it hit a borrowing limit at the beginning of the year. *See, e.g., Puerto Rico: Trouble on "Welfare Island"*, The Hamilton Spectator, May 27, 2006.[4] On May 1, 2006, the governor shut down nonessential government operations for two weeks, furloughing 90,000 public employees, after failing to reach agreement with the legislature on how to fund a $740 million budget deficit. The government only resumed operations when it secured a $741 million emergency loan from the Government Development Bank to be repaid by some combination of a new sales tax and existing revenues. *See, e.g.*, Marion Barbel, *Loan Deal Struck to Bail Puerto Rico Out of Financial Crisis*, Global Insight, May 11, 2006. In the wake of the government shutdown, Moody's cut the rating of $25 billion in Puerto Rico general obligation bonds to one level above junk status. *See* Manuel Ernesto Rivera, *Deal to end Puerto Rico shutdown hangs on approval of bailout legislation*, Associated Press, May 13, 2006.

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[4] *Available at* http://www.hamiltonspectator.com/NASApp/cs/ContentServer?pagename=hamilton/Layout/Article_Type1&c=Article&cid=1148681735320&call_pageid=1024322466723 (last visited July 18, 2006).

A compromise fiscal reform bill was signed into law in mid-May that calls for cutting up to $350 million in government spending in 2007. Negotiations are under way to overhaul the tax system to bring in an additional $300 to $400 million in revenues. *See* Adam L. Cataldo, *Puerto Rico OKs Up to $350M in Spending Cuts*, The Bond Buyer, May 30, 2006, at 1. The emergency loan and fiscal reform bill, however, may "not address the structural deficiencies at the root of the budget impasse." *Loan Deal Struck to Bail Puerto Rico Out of Financial Crisis, supra.*

The Virgin Islands has also struggled to keep its borrowing within legal bounds. In 1999, the Virgin Islands Fiscal Recovery Task Force warned that if the territorial government did not change its ways, its annual deficit could soon reach over $140 million. *See* Virgin Islands Fiscal Recovery Task Force, *5 Year Plan for Fiscal Recovery*, Pt. 1, § I.A.[5] The Task Force predicted that the island's debt would balloon from $300 million at the end of that fiscal year to $700 million by the 2004 fiscal year. *Id.* In fact, by 2004 the island's debt had reached $1 billion, more than 60% of the Islands' gross domestic product. *See House Panel Votes To Create CFO For Virgin Islands*, Nat'l J. Cong. Daily, July 14, 2004; CIA, *The World Factbook*.[6]

One of the territorial government's responses to this financial crisis was to try to borrow more money. In 1997, then-governor Roy Schneider sought permission to borrow $105 million to fund tax rebates owed to thousands of Virgin Islands residents. *See Virgin Islands governor seeks new loans to pay off old debts*, Associated Press, Sept. 15, 1997. In 1999, the territorial government sought amendments to its organic act that would permit it to issue an additional

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[5] *Available at* http://64.233.161.104/search?q=cache:GGOxrJcgpeQJ:www.usvi.org/oit/5yrplan/part%2520i%2520-%2520section%2520i_general%2520fund_pages%2520i-1%2520through%2520i-40.htm+&hl=en&gl=us&ct=clnk&cd=1 (last visited July 18, 2006).

[6] *Available at* https://www.cia.gov/cia/publications/factbook/geos/vq.html (last visited July 18, 2006).

$130 million in tax-exempt bonds, assuring Congress that the government would pursue reforms that would balance the budget by 2003. *Hearing Before the S. Comm. On Energy & Natural Res.*, 106th Cong. (Oct. 14, 1999) (statement of Ferdinand Aranza, Dir. of the Office of Insular Affairs, Dep't of the Interior). From 1999 to 2001, the government borrowed another $300 million from private lenders to refinance the deficit. *Hearing Before the H. Appropriations Interior Subcom.*, 107th Cong. (May 2, 2001) (statement of the Hon. Donna M. Christensen). In 2001, it requested that $45 million in outstanding FEMA disaster relief loans be forgiven, again assuring Congress that the deficit would soon be a thing of the past. *Id.*

The Virgin Islands territorial government has recently taken some steps—raising taxes, imposing a hiring freeze, encouraging private economic development, and making the island a more attractive tourist destination—that appear to have succeeded in bringing its budget back into balance. But pressure for additional borrowing may well emerge again soon. *See, e.g.*, Tim Fields, *PFA OKs bonds to refinance debt, add library and roads*, Virgin Islands Daily News, June 8, 2006.[7]

II. THIS CASE PRESENTS A CASE OR CONTROVERSY WITHIN THE MEANING OF ARTICLE III

Although petitioner and respondent are both officials in the Guam Government, this case presents a case or controversy within the meaning of Article III of the Constitution because it is "the kind of controversy courts traditionally resolve," and the setting assures "that concrete adverseness which sharpens the presentation of issues." *United States* v. *Nixon*, 418 U.S. 683, 697 (1974).

Even in cases involving the federal executive branch, this Court has repeatedly taken the view that the "mere assertion of a claim of an 'intrabranch dispute,' without more,

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[7] *Available at* http://www.virginislandsdailynews.com/index.pl/article?id=17591799 (last visited July 18, 2006).

has never operated to defeat federal jurisdiction." *Nixon*, 418 U.S. at 693. Article III courts "must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented." *United States* v. *ICC*, 337 U.S. 426, 430 (1949). Those principles apply with even greater force where, as here, each party is independently elected to his office, *see* 5 Guam Code Ann. § 30101(a), petitioner Attorney General may not be removed from office by respondent Governor, *see* 48 U.S.C. § 1421g(d)(2); 5 Guam Code Ann. § 30101(c), and local law gives each official an independent, and thus potentially conflicting, authority over a matter of great public significance, the approval of government contracts, including for public borrowing, *see* 5 Guam Code Ann. § 22601.

This dispute is the kind of controversy courts traditionally resolve. Federal courts, including this Court, have, with some regularity, heard cases in which executive agencies or officials have appeared on opposite sides of the dispute. *See, e.g.*, *IRS* v. *FLRA*, 494 U.S. 922 (1990); *Secretary of Agric.* v. *United States*, 347 U.S. 645 (1954); *TVA* v. *EPA*, 278 F.3d 1184, 1193-1195 (11th Cir. 2002), *cert. denied sub. nom. Leavitt* v. *TVA*, 541 U.S. 1030 (2004) (collecting decisions). They have done so particularly when, as here, the executive official challenging the position of the chief executive was insulated from removal by the chief executive. *See TVA*, 278 F.3d at 1193-1194 (collecting decisions). And state courts have regularly considered suits pitting attorneys general against other executive officials, including governors, justiciable when the contending officials disagreed over the constitutionality of state laws. *See, e.g.*, *People ex rel. Salazar* v. *Davidson*, 79 P.3d 1221, 1227-1231 (Colo. 2003) (attorney general versus secretary of state); *State ex rel. Condon* v. *Hodges*, 562 S.E.2d 623, 626-629 (S.C. 2002) (attorney general versus governor); *State ex rel. Douglas* v. *Thone*, 286 N.W.2d 249, 254-256 (Neb. 1979) (attorney general versus governor). The Guam Organic Act, a federal enactment, is the equivalent of the Territory's constitution. *See* 48 U.S.C. § 1423a; *Haeuser*, 97 F.3d at 1156.

This case is marked by concrete adverseness because the independently elected petitioner Attorney General and respondent Governor "advocate genuinely conflicting views" regarding the interpretation of the Guam Organic Act's borrowing-limitation provision, *TVA*, 278 F.3d at 1197, and local law gives them the authority to endow those conflicting views with concrete effects by making the issuance of government contracts contingent on the approval of both officials, *see* 5 Guam Code Ann. § 22601. Thus, since petitioner argues that federal law precludes respondent from issuing the authorized bonds, and respondent insists no such impediment exists, "valuable legal rights ... will be directly affected to a specific and substantial degree by the decision of the question of law." *Nashville, Chattanooga & St. Louis Ry.* v. *Wallace*, 288 U.S. 249, 262 (1933).[8]

[8] Moreover, even if it were not clear that Article III was satisfied when the dispute began, the binding effect of the Guam Supreme Court's decision constrains petitioner's exercise of his statutory obligation to review bond issuance contracts for legality and thus makes all the clearer the concreteness of the dispute presented to this Court. *See Asarco* v. *Kadish*, 490 U.S. 605, 612-624 (1989) (Article III determination turns on state of dispute at time of petition to this Court, including effect of lower court decision on parties, not on state of dispute at some earlier time).

CONCLUSION

This case presents an important (and rare) opportunity for this Court to ensure that the limitations Congress has imposed on a territorial government are correctly understood and carefully observed. Doing so will promote both the fiscal stability of Guam and the accountability of its government to the U.S. citizens it serves.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JULY 2006

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE TERRITORY OF GUAM

No. CRQ03-001

IN RE REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Governor Felix P. Camacho, *Petitioner.*
Douglas B. Moylan, Office of the Attorney General, *Party In Interest.*

Argued and Submitted on July 9, 2003
Filed July 23, 2003

[2003 WL 21697180]

Before F. PHILIP CARBULLIDO, Chief Justice, BENJAMIN J.F. CRUZ and RICHARD H. BENSON, Justices Pro Tempore

OPINION

CARBULLIDO, C.J.

[1] The Governor of Guam, Felix P. Camacho ("Governor"), filed a Request for Declaratory Judgment pursuant to Title 7 GCA § 4104 requesting that this court determine whether the issuance of bonds authorized by Public Law 27-19 ("P.L. 27-19") would violate Section 11 of the Organic Act of Guam, (codified at 48 U.S.C. § 1423a) ("Section 11"), which limits public indebtedness to 10% of the aggregate tax valuation of the property on Guam. Related to that determination, the Governor asks the court to interpret the phrase "aggregate tax valuation of the property on Guam" as used in Section 11, and to provide guidance on how the government is to ascertain the "aggregate tax valuation" when determining whether the debt limitation has been ex-

ceeded. We find that the allowable public indebtedness under Section 11 is to be ascertained with reference to the appraised value of the property on Guam, as reflected on the certified tax roll in effect at the time the debt is incurred. We further find that the 2002 tax roll was the product of a fair and reasonable valuation system, and thus can be used to determine the current debt limit. From these findings, and considering the government's current outstanding public indebtedness, we conclude that the issuance of the bonds authorized by P.L. 27-19 would not violate the debt-limitation clause contained in Section 11 of the Organic Act.

I.

Public Law 27-19, enacted on April 28, 2003, was proposed upon the Legislature's finding that "the current revenues available in the General Fund [are] ... insufficient to pay certain obligations of the General Fund and that a mechanism is needed to provide necessary cash to the General Fund to pay such obligations...." *See* Guam Pub. L. 27-19, § 1 (Apr. 28, 2003). P.L. 27-19 authorizes the Governor of Guam to issue new bonds of up to $418,309,857 for that purpose without further legislative approval.[1] Of that amount, $218,309,857 may be used to pay income tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding tax payments, general fund vendor payables, and public school repairs.[2] The remaining $200 million may be used to "fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at matched maturity." Guam Pub. L. 27-19, § 2 (Apr. 28, 2003). Pursuant to the authority granted by P.L. 27-19, the Governor intends to facilitate the issuance of approximately $393 million in bonds.

Under Title 5 GCA § 22601, government contracts may be entered into only upon execution of the Governor, "after

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[1] The law also authorizes the issuance of an additional $50 million of bonds only upon further approval of the Legislature.

[2] Guam Pub. L. 27-19, § 2 (Apr. 28, 2003).

approval of the Attorney General." Title 5 GCA § 22601 (1996). The Attorney General, Douglas B. Moylan ("AG"), in a letter to the Governor and Speaker of the 27th Guam Legislature, Vicente C. Pangelinan, dated May 14, 2003, indicated his refusal to sign any contract for the issuance of the bonds claiming that the issuance of the bonds would violate the debt-limitation provision of Section 11 of the Organic Act of Guam. Req. Decl. J., Exhibit A (AG Letter). The AG's conclusion was based on his opinion that the government's maximum debt limit allowed under Section 11 is to be based on the assessed value of property on Guam, and that, in any event, the current tax list could not be used to determine the debt limit because it is inaccurate due to the fact that the valuation of property on Guam, required to be performed every three years under 11 GCA § 24306, was last conducted in 1993.

[2] Presumably in response to the AG's concerns, on June 25, 2003, the Governor signed into law Public Law 27-21 ("P.L. 27-21"), which amends sections of the real property tax law in two regards. First, Title 11 GCA § 24306 was amended to provide that if the triennial property valuations in Guam are not conducted by the tax assessor as required under that section, "then the *last completed* valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under the Chapter." Guam Pub. L. 27-21 § 1 (June 25, 2003). Second, the law added subsection (1) to Title 11 GCA § 24102, to provide that the "aggregate tax valuation" under Section 11 of the Organic Act was to be "certified as being one hundred percent (100%) of the appraised value of the property on Guam based on the *last completed* valuation conducted pursuant to [Title 11 GCA] § 24306, as supplemented by the annual adjustments provided for in § 24307." Guam Pub. L. 27-21, § 2 (June 25, 2003).

On July 1, 2003, the Governor filed the instant Request for Declaratory Judgment in this court. The court thereafter permitted the Attorney General to intervene in the proceeding.

II.

This court has jurisdiction to issue declaratory judgments upon the request of the Governor under Title 7 GCA § 4104. *See* Title 7 GCA § 4104 (as amended by P.L. 24-61 Sept. 17, 1997). Our authority extends to providing "the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide" or answering "any question affecting the powers and duties of the Governor and the operation of the Executive Branch...." *Id.* We find that the Governor's Request satisfies the jurisdictional standards set forth in Title 7 GCA § 4104. The issues presented require an interpretation of local and federal law, and relate to the Governor's ability to lawfully execute bonds allowed by the Legislature under P.L. 27-19, as necessary to manage the executive branch.

III.

A. Issues

The Governor seeks a declaratory judgment on the following three questions:

> (1) Whether the public indebtedness of Guam, after the contemplated issuance of bonds authorized by [P.L.] 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and
>
> (2) Whether "aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam; and
>
> (3) Whether even if one or more of the triennial valuations required by 11 GCA § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate ap-

praised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 GCA § 24306 as supplemented by the annual adjustments provided for in 11 GCA § 24307.

[3] Req. Decl. J., p. 4 (July 1, 2003). The answers to these questions require a determination of the following issues: (1) the meaning of the terms "aggregate tax valuation," "property," and "indebtedness" in Section 11 of the Organic Act; (2) the sufficiency of the 2002 tax roll in determining the current debt limit; and (3) Guam's current level of indebtedness based on the interpretation of the relevant terms in Section 11 with reference to the 2002 tax roll.

B. Standard of Review

This case is brought pursuant to our original, rather than appellate, jurisdiction; thus, all issues are determined herein in the first instance. *See In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1, ¶ 8. The questions presented for the court's determination require the interpretation of federal and local statues applicable to Guam. The interpretation of these statutes is a legal question within this court's authority to decide. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 26 ("Federal court decisions do not prevent this court from determining the correct interpretation of provisions of the Organic Act, Guam's constitution."), *aff'd by Gutierrez v. Pangelinan*, 276 F.3d 539 (9th Cir. 2002); *Government of Guam v. 221 Slot Machines*, 2002 Guam 22, ¶ 4 ("Issues of statutory interpretation are questions of law that are reviewed de novo.") (citation and internal brackets omitted).

C. Discussion

The primary issue presented to the court is whether the issuance of one or more series of bonds in the aggregate amount not to exceed $418,309,857, as allowed by P.L. 27-19, would violate Section 11 of the Organic Act.

1. Section 11 Debt-Limitation Provision

Section 11 of the Organic Act contains a statutory limitation upon government borrowing, commonly referred to as a debt-limitation provision. *See* 15 McQuillin, *The Law Of Municipal Corporations* § 41.01 (3d ed. 1949).[3] Section 11 provides in relevant part:

> Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.* Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.
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> 48 U.S.C.A. § 1423a (emphasis added).

The purposes of the debt-limitation provision in Section 11 have never been articulated by this court. However, it is widely recognized that debt-limitation provisions "serve as a limit to taxation and as a protection to taxpayers; to maintain ... solvency, both governmental and proprietary; and to keep [local] ... residents from abusing their credit, and to protect them from oppressive taxation." 15 McQuillin, *supra*, § 41.01 (footnotes omitted); *see also* Tracy Nicholas

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[3] Most states and local municipalities have constitutional or statutory limitations on borrowing. *See* 15 McQuillin, *supra*, § 41.01 ("A majority of the states have constitutional or statutory limitations upon borrowing by local governments."); *Guam Telephone Authority v. Rivera*, 416 F. Supp. 283, 285 (D. Guam 1976) ("Section 11 is similar to sections included in the Constitutions of most states.").

Eddy, *The Referendum Requirement: A Constitutional Limitation on Local Government Debt in Florida*, 38 U. Miami L. Rev. 677, 679 (1984) ("The primary objectives of the debt restrictions are preventing corruption, discouraging extravagance, and promoting sound fiscal policy for local governments."); *see also City of Hartford v. Kirley*, 493 N.W.2d 45, 51 (Wis. 1992) ("Article XI, sec. 3(2), is intended to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation."). Furthermore, their purpose is to "prevent the current legislature from binding a future legislature, and to prevent legislators from making future taxpayers pay today's bills." 15 McQuillin, *supra*, § 41.01; *Keller v. City of Scranton*, 49 A. 781, 782 (Pa. 1901) ("The constitutional provision i[s] intended ... to prevent municipalities from loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond the defined limits, they must pay as they go."); *see also City of Hartford*, 493 N.W.2d at 51 ("It seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations.").

2. "Aggregate Tax Valuation of the Property in Guam"

[4] Under Section 11, the public indebtedness of Guam cannot exceed "10 per centum of the *aggregate tax valuation* of the property in Guam." 48 U.S.C.A. § 1423a (emphasis added). The phrase "aggregate tax valuation" is not defined in the Organic Act.

The Governor argues that the phrase "aggregate tax valuation" means the *appraised value*, as distinguished from *assessed value*, of the property on Guam. By contrast, the Attorney General argues that the term "valuation" in Section 11 is the same as the term "value" in local statutes governing Guam real property taxes, Chapter 24 of Division 2, Title 11 GCA. Under 11 GCA § 24102, the term "value" is defined as "thirty-five per cent (35%) of the appraised value...." Title 11 GCA § 24102(f) (1996). "Appraised value"

is defined in the same section as "the amount at which property would be taken in payment of a just debt from a solvent debtor." *Id.*

a. Barrett-Anderson v. Crisostomo.

Only one local court has defined the phrase "aggregate tax valuation" found in the Organic Act. *See Barrett-Anderson v. Crisostomo*, CV0651-89 (Super. Ct. Guam Nov. 21, 1989). In *Barrett-Anderson*, GEDA authorized the issue of limited obligation infrastructure improvement bonds and water system revenue bonds. *Id.* at p. 1. The then-legislative counsel issued a memo opining that the issuance of the bonds would violate the debt-limitation provision contained in Section 11 of the Organic Act. *Id.* at p. 2. His opinion was based on his conclusion that the term "aggregate tax valuation of the property in Guam," as used in Section 11, referred to the assessed value of taxable property, and not the appraised or market value of the property. Then Superior Court Judge Janet Healy Weeks disagreed.[4] She concluded, instead, that the phrase "aggregate tax valuation" means the "appraised value of the taxable property on Guam." *Id.* at p. 14. In reaching this conclusion, Justice Weeks started with the principle that the interpretation of a statute should be gleaned from the legislative intent. *Id.* at p. 12. She found that because the concept of "assessed value" as used in relation to the assessment of property taxes was made part of local law after the enactment of Section 11, and because these later-enacted local statutes governing real property tax assessments did not employ the same language as that used in Section 11 or otherwise reference the debt limitation in Section 11, those statutes, which premise tax assessments on 35% of the appraised value of taxable property, could not logically be used in interpreting Section 11 of the Organic Act. Moreover, Justice Weeks found that using the assessed value as the base to calculate

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[4] Judge Weeks was subsequently appointed Associate Justice of the Guam Supreme Court. She has since retired.

the debt limit would "set Guam's debt-ceiling at a far lower level then those municipalities that have proportionately greater property tax bases." *Id.* at p. 13. She concluded that "[t]here is no indication that Congress, in enacting the Organic Act, sought to stifle economic growth on Guam by setting the debt ceiling restrictively low." *Id.*

b. Public Law 27-21 § 2.

[5] Public Law 27-21 § 2, enacted on June 25, 2003, added a new subsection (1) to Title 11 GCA § 24102 to define the phrase "aggregate tax valuation" in Section 11 as "one hundred percent (100%) of the appraised value of the property on Guam," thus codifying Justice Weeks' holding in *Barrett-Anderson*. Guam Pub. L. 27-21 § 2 (June 25, 2003). This legislative determination, however, is not controlling on this court's interpretation of the phrase as used in Section 11. The Guam Legislature cannot, through legislation, redefine the provisions of the Organic Act. *See* 15 McQuillin, *supra*, § 41.05 ("[W]ith respect to territories, debt limits may be prescribed by act of Congress."). "[A] constitutional debt-limitation provision is self-executing and the legislature cannot authorize a municipality to incur a greater debt than that fixed by the constitution."[5] 15 McQuillin, *supra*, § 41.05. Thus, the Organic Act limits the legislature's power with regard to government indebtedness. *See Breslow v. School District*, 182 A.2d 501, 504-05 (Pa. 1962) (holding that a stat-

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[5] While the Organic Act is a federal statute, it is, for all intents and purposes here, the equivalent of a constitution. *See Haeuser v. Dep't of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996) ("The Organic Act serves the function of a constitution for Guam."). This is underscored by the well-established principle in this jurisdiction that the Guam Legislature cannot enact laws which are in derogation of the provisions of the Organic Act. 48 U.S.C.A. § 1423a ("The legislative power of Guam shall extend to all rightful subjects of legislation of [local application] *not inconsistent with this chapter* and the law of the United States applicable to Guam.") (emphasis added); *see In re Request of Governor*, 2002 Guam 1, ¶ 36 ("[T]he legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act.") (citation omitted).

ute which defined the term "assessed value" in the constitution's debt-limit provision to mean market value was unconstitutional because it contradicted the plain language of the constitution requiring the debt limit to be based on assessed value); *see also City Water Supply Co. v. City of Ottumwa*, 120 F. 309, 314 (S.D. Iowa 1903) (stating that the constitutional debt-limitation provision could not be circumvented by statute upon consent of the voters because if that were so, "then we have no use for the constitution"); *cf. City of Hartford*, 493 N.W.2d at 50 ("Notwithstanding the legislature's recital that TIF bonds do not constitute a debt within the meaning of the constitution, the court must examine the substance of the obligations to ascertain their effect under art. XI, sec. 3. The legislature's characterization of the bonds is not controlling on this court's determination of the constitutional issue."). The problem inherent in allowing the legislature to define the terms of the Organic Act is plain: "all that any Legislature would have to do, in order to circumvent the Constitution is to pass an Act defining or redefining any term or any language used in the Constitution to suit its purpose or objective." *Breslow*, 182 A.2d at 505. Such circumvention through local legislation would nullify the debt-limitation provision which Congress imposed. *Id.* at 504-05 (concluding that the legislature cannot pass statutes which "attempt to circumvent the Constitution and double or triple the borrowing capacity of municipalities").

Finally, we are mindful that our interpretation of Section 11 must be guided by the rules of interpretation and precedent. The court may not "permit a distortion of principles and time-honored precedents merely to satisfy the lust of a greedy and overindulgent, benevolent government...." *Allen v. Van Buren Township of Madison County*, 184 N.E.2d 25, 31 (Ind. 1962).

[6] "In cases involving statutory construction, the plain language of a statute must be the starting point." *See Aguon v. Gutierrez*, 2002 Guam 14, ¶ 6 (citations omitted). "[O]ur duty is to interpret statutes in light of their terms and legislative intent." *Carlson v. Guam Tel. Auth.*, 2002

Guam 15, ¶ 46 n.7; *see also In re Request of Gutierrez*, 2002 Guam 1, ¶ 17 ("When interpreting a statute, the court's task is to determine the intent of the legislature and give the statute meaning without altering or amending the statute's scope."). "Undefined terms in a statute are generally ascribed their common ordinary meaning." *Carlson*, 2002 Guam 15 at ¶ 34. "Moreover, in determining legislative intent, a statute should be read as a whole," and therefore, we are to "construe each section in conjunction with other sections." *Sumitomo v. Gov't of Guam*, 2001 Guam 23, 11 ¶ 17; *Gutierrez v. Ada*, 528 U.S. 250, 255, (2000) ("[W]ords and people are known by their companions."). "[T]he language of the statute cannot be read in isolation, and must be examined within its context.... A statute's context includes looking at other provisions of the same statute and other related statutes." *Aguon*, 2002 Guam 14 at ¶ 9. Finally, "questions of statutory interpretation may be aided by reference to the prevailing interpretation of other statutes that share the same language and either have the same general purpose or deal with the same general subject as the statute under consideration." *Aguon*, 2002 Guam 14 at ¶ 11 (citation omitted).

After reviewing the language of Section 11, we disagree with the AG's contention that *valuation* in Section 11 be interpreted as value under Title 11 GCA § 24102(f).[6] First, the two phrases are different; the term *value* is distinct from the term *valuation*. *See Barrett-Anderson*, CV0651-89, pp. 12-13. Second, the definition in the local statute cannot reasonably be viewed as the definition Congress intended for the phrase "tax valuation" in Section 11 because the two statutes were enacted by completely different legislative bodies, and, moreover, as acknowledged by Justice Weeks in *Barrett-Anderson v. Crisostomo*, Section 11 was enacted prior to 11 GCA § 24102(f). *See Barrett-Anderson*, CV0651-

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[6] As indicated earlier, *value* is defined as "thirty-five (35%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor." 11 GCA § 24102(f) (emphasis added).

89, pp. 12-13; *Slaven v. BP America, Inc.*, 973 F.2d 1468, 1475 (9th Cir. 1992) (determining that actions by a later legislature have little relevance in interpreting a prior legislature's actions). Finally, and most importantly, the plain language of Section 11 does not support the AG's argument that the assessed value of property should be used to calculate Guam's debt limit.

Reference to the Organic Act of the Virgin Islands underscores this point. The debt-limitation provision in the Organic Act of the Virgin Islands, codified at 48 U.S.C. § 1403, was enacted by the same Congress which enacted Section 11. The Virgin Island's provision was enacted a mere 10 months prior to the enactment of Section 11. Title 48 U.S.C. § 1403 provides that "no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the *aggregate assessed valuation* of the taxable real property in the islands." 48 U.S.C.A. § 1403 (emphasis added). Congress provided that the governmental debt of the Virgin Islands be determined by the *assessed* valuation of the taxable property. In contrast, the same Congress in enacting the Organic Act of Guam did not provide that the debt limit of the government of Guam be based on the *assessed* values of the property on Guam. 48 U.S.C.A. § 1423a. Rather, the debt limit under Section 11 is to be determined by the *tax valuation* of the property on Guam. *Id.* This difference in the statutory language demonstrates that under the plain language of Section 11, the debt limit is not to be based on the *assessed* valuation of property.

[7] In fact, in other jurisdictions where courts have interpreted their debt-limitation provisions as requiring the limit to be based on assessed values, their constitutional debt limitation provisions specifically provided that assessed values be used. *See e.g. Breslow*, 182 A.2d at 503-05 (invalidating as unconstitutional a local law which redefined the term "assessed value" to mean "market value" for purposes of the debt-limitation provision where the Constitution provided that "[t]he debt of any ... school district ... shall never exceed seven (7) per centum upon the *assessed value of the*

taxable property....") (citation omitted) (emphasis added); *Allen*, 184 N.E.2d at 29 (holding that because, under the constitutional language, the "value of taxable property" was to be ascertained "by the last *assessment*," the debt limitation was to be based on the assessed value) (citing Article 13, § 1 of the Indiana Constitution which provided that "[n]o political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the taxable property within such corporation, to be ascertained by the last *assessment* for State and county taxes, previous to the incurring of such indebtedness"); *Phelps v. City of Minneapolis*, 219 N.W. 872, 873-74 (Minn. 1928) (holding that the debt limit was to be based on the assessed, as opposed to actual, value of the taxable property in light of the constitutional language limiting the net indebtedness of the city to 10% "of the last *assessed* value of all taxable property therein") (emphasis added); *City of Chicago v. Fishburn*, 59 N.E. 791, 792-93 (Ill. 1901) (determining that the constitutional provision limiting the debt limit to 5% of the value of taxable property as of the last assessment referred to the *assessed* value and not actual value, especially in light of the common understanding that the term "assessment, in connection with taxation" means "an official valuation of property for the purpose of fixing the proportion of taxes which each one shall pay," and the commonly known fact that "property was not assessed at full value"); *Baisden v. City of Greenville*, 111 So. 2, 4-5 (Ala. 1927) (holding that the constitutional debt-limitation provision which limited the municipality's indebtedness to a fixed percent of "the *assessed* value of the property therein," means "the assessed value of the property as fixed for state taxation") (internal quotations omitted) (emphasis added).

Viewing Section 11, there is simply no requirement that the debt limit be based on *assessed* values. Had Congress wished to limit Guam's indebtedness to a percentage of assessed values, it could have included that language in Section 11 as they did with the Virgin Islands, and as was done by the framers of the constitutions of several states.

[8] The debt limit under Section 11 is to be based on the "tax valuation" of property. 48 U.S.C.A. § 1423a. We interpret the phrase "tax valuation" to mean the appraised value of property on Guam, and not the assessed value, because all taxes on property must necessarily be based, in the first instance, upon appraised values of the property. *See* 11 GCA § 24102(f) (defining value for purposes of tax levies as "thirty-five percent (35%) of the *appraised value*") (emphasis added); *Hansen v. City of Hoquiam*, 163 P. 391, 392 (Wash. 1917) (recognizing that while a state statute required that property be assessed at a rate not exceeding 50% of actual value, because this assessment rate *was necessarily based on the actual value*, then logically in every assessment the appraised value of the property was ascertained). Moreover, there is nothing in the Organic Act limiting the levy of property taxes to a certain percentage of actual or market value. Thus, it cannot be presumed that Congress meant to restrict the debt limit to a particular assessment rate to be determined by the local legislature. The better reading of the phrase "tax valuation" is the value which Congress contemplated the taxes would be based, which, considering the absence of a limitation regarding assessment rates, could only rationally be the appraised market value of the property.

Further, our interpretation is consistent with the maximum power to tax granted by Congress. Congress granted the local legislature the power to tax property. 48 U.S.C.A. § 1423a. Congress also intended that the government of Guam be able to incur "debt" in the constitutional sense. Any bonds or other obligations which are not issued upon the pledge of governmental taxes and revenues are not "debt" in the constitutional sense, and are thus not generally subject to a constitutional debt-limitation provision. *City of Hartford*, 493 N.W.2d at 51 n.13, debt in a constitutional sense "must be an undertaking enforceable by the creditor *against the municipality or its assets*) (citation omitted and emphasis added). Because Section 11 contains a limitation on "indebtedness," Congress clearly granted the government the authority to incur "debt," that is, the power to in-

cur obligations payable out of the general revenues of the government. The power to incur "debt" is clearly tied to the power to tax, because in incurring debt, the government pledges its credit, *i.e.*, its taxing power. *See id.* at 55-56. Thus, the limitation on incurring debt in Section 11 must be interpreted consistently with the power to tax. Because Congress did not impose an assessment rate in the Organic Act, Congress clearly granted the legislature the power to impose taxes on the full market value of property. We thus can only interpret the debt limitation in Section 11 consistently with the maximum grant of power to tax allowed by Congress. It follows that the congressionally imposed limitation on government indebtedness under Section 11 is based on the full market value of property, and not anything less. Whether the legislature chooses to levy based upon assessed values which are lower than actual values, or whether the legislature declines to tax the property at a rate necessary to satisfy the underlying obligations, are matters of policy and fiscal management which this court cannot dictate. Nor are we called to pass upon those questions. The issue before us relates to the object upon which the debt limit in Section 11 is based, and basing it on appraised values is entirely consistent with the taxing authority granted to the legislature under the Organic Act.

3. Meaning of "Property."

[9] The next relevant issue pertains to the property upon which the debt limit is to be calculated. Under Section 11, the government's indebtedness shall not exceed 10% of the tax valuation of the "property on Guam." The Governor argues that all property on Guam is to be considered, real and personal, and without regard to whether the property is exempt from taxation. The AG argues that because only real property has been assessed for taxation purposes, only real property is to be considered in determining the allowable indebtedness. The AG further argues that property which is exempted from taxation should not be considered.

Again, with this issue, we look first to the language of Section 11, and draw comparison to the debt-limitation pro-

vision contained in the Organic Act of the Virgin Islands. Under 48 U.S.C. § 1403, the Virgin Islands' total indebtedness is a percentage of the value of "real property." 48 U.S.C.A. § 1403. The same Congress in enacting Section 11 limited Guam's debt to a percentage of "property." Because the word "property" in Section 11 is not further modified or clarified, it could only mean that all property on Guam, whether real or personal, be potentially included in calculating the debt limit. Property clearly includes both real and personal property. *See* 15 McQuillin, *supra*, § 41.08 ("The valuation [of property used to calculate the debt limit] is usually based on the ... value of personal as well as real property, but in some jurisdictions the ... value of real estate is the basis."); *see McLeland v. Marshall County*, 201 N.W. 401, 409 (Iowa 1924) (finding that the term "property" in the constitutional debt limitation provision means real and personal property); *Bauch v. City of Cabool*, 148 S.W. 1003, 1006 (Mo. Ct. App. 1912) (holding that stock of merchants are included in determining tax valuation of "property" in the debt-limitation provision).

Further, unlike the Virgin Islands' Organic Act, where the debt limit is based on the "*taxable* ... property in the islands," the debt limit in Guam's Organic Act is to be based on the "property on Guam." *Compare* 48 U.S.C. § 1403, *with* 48 U.S.C. § 1423a. One conclusion from this comparison is that Congress did not intend to base Guam's debt limit on *taxable* property, or in other words, property currently taxed.[7] This conclusion is conceivable; however, such inter-

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[7] We note that the Governor argues that "taxable property" in the Virgin Islands' Organic Act refers to property which *may* be taxed, as distinguished from property that *is* being taxed. *See* Governor's Opening Brief, p. 30 n. 14 (July 7, 2003). The Governor argues that Section 11 should be interpreted the same way, as including in the debt limit all property which is capable of being taxed, *i.e.*, is *taxable*. The Governor's contention that both Organic Acts should be interpreted in a similar manner ignores the fact that the two provisions employ different language. If the Governor's interpretation of the Virgin Islands' Organic Act were accepted, then this would mean that by deleting the phrase "taxable prop-

pretation disregards both the language of Section 11 and the policies underlying debt limitation provisions.

Section 11 provides that the debt limit be based on the "*tax* valuation" of property in Guam. Congress must have meant something when it used the word "tax" in the first part of the clause. By using the term tax valuation, it is clear that the debt limit is to be based on the value of property being taxed. By specifying that the tax valuation is to be used, there would be no need to then say that the debt limit is to be based on the taxable property. If so, the clause would read: "aggregate tax valuation of the taxable prop-

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erty" in Section 11, then all property on Guam, whether taxable or not (*i.e.*, capable of being taxed or not), can be used to determine the debt limit. This is untenable because if interpreted in that manner, then we could include property on Guam owned by the United States in calculating the debt limit. We do not think the Congress intended that U.S. owned property be included. Overall, we think that the phrase "taxable property" in the Virgin Island's Organic Act is better interpreted to mean property which is actually taxed, as distinguished from property which is merely capable of being taxed. *See Campbell v. Red Bud Consol. Sch. Dist.*, 198 S.E. 225, 229 (Ga. 1938) (concluding that the value of personal property exempted from taxation should not be included in determining the debt limit of 7% of the "assessed value of all *taxable* property"). In fact, it appears from the Virgins Islands' Five-Year Plan for Fiscal Recovery that the debt limit is based on property that is actually being taxed. *See* 5 Year Plan for Fiscal Recovery, www.usvi.org (July 23, 2003). In the report it was stated that in 1999, the Virgin Island's debt limit was $731 million, which is ten percent of the "taxable property in the Virgin Islands" valued at $7.31 billion. *See* http://www.usvi.org/oit/5yrplan/sectionviii000000plan000000offinance--pagesi-25.htm (July 23, 2003). In that same year, the government collected $55,382,513 in real property tax. *See* http://www.usvi.org/oit/5yrplan/parti-sectioni--exhibiti-30,pagesi-30andi-31.htm (July 23, 2003). Because real property tax is levied at 1.25% of 60% of the actual value of real property, a simple calculation reveals that a tax on $7.31 billion would yield approximately the same amount as the tax actually collected for that year. *See* http://www.usvi.org/oit/5yrplan/parti-sectioni--generalfund--pagesi-1throughi-40.htm (July 23, 2003). Thus, it appears that the $7.31 billion which the government based its debt limit on included the value of property which was actually taxed, and not exempt property. *Id.* (noting that 46% of all real property in the Virgin Islands is exempt from real property taxes by virtue of both the local law and the Virgin Island's Organic Act).

erty on Guam." Because "tax" is used in the first part of the clause, it would be superfluous to then say that the debt limit is to be based on the taxable property. Moreover, it is imprudent to base the debt limit on non-taxed property because such property is not revenue generating. "Debt" in the constitutional sense is secured by taxes and revenues from the general fund. The object of the limit is to place a cap on debt which is to be satisfied from the general revenues of the government. Property which is not taxed does not contribute to the general revenue of the government, and thus should not be used to determine the debt limit. *See State ex rel. Village of Oak Hill v. Brown*, 180 N.E. 707, 709 (Ohio 1932) (finding that *because bonds were secured by taxable property*, and because the indebtedness was therefore calculated based upon taxable property, the 1930 list, which included non-taxable property, could not be used in determining the city's debt limit) (emphasis added)[8],[9] If the gov-

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[8] See also *Employees' Retirement System v. Ho*, 352 P.2d 861, 886-87 (1960), where the dissenting justices provided a good explanation of the rationale for tying the debt limit to the property values, stating: It has been argued that the use of a percentage of assessed value as a measure of the State debt limit is without significance, since the real property tax is a county revenue. However, as explained by the Chairman of the Committee on Taxation and Finance during debate ... upon consideration of the debt limit provisions, June 19, 1950: the people that buy the bonds are interested in the ratio of your debts to your assessed value because while all of the tax revenues of the State or the counties naturally are available for the payment of the debt, it's been customary for bondholders to look to the real property tax as their real collateral. It is noteworthy that the power to impose a real property tax is reserved to the State by Article VII, section 3, so that this customary collateral may be looked to when the general faith and credit of the State are pledged as is done in the case of general obligation bonds, even though there be no real possibility that resort to the real property tax may be necessary. *Employees' Retirement System*, 352 P.2d at 886-87.

[9] This interpretation is not inconsistent with our previous determination that the appraised value of property be used to determine the government's debt limit. It is one thing to base the debt limit on a valuation consistent with the legislature's maximum authority to tax property, because it is the taxes on property which secures the debt. So long as the legislature can tax property at its full appraised valuation, there is ade-

ernment decides to tax currently exempt property in the future, then its debt limit may be increased accordingly at that later point in time.

[10] Accordingly, under Section 11, property which is not taxed at the present time, including personal property and exempt real property, is not included in determining the debt limit.

4. Calculating the Debt Limit: Sufficiency of 2002 Tax Rolls

Having determined that under Section 11, the debt limit is to be based on the appraised value of all taxed property on Guam, the next logical question is where or how to ascertain the appraised value of property. The language of Section 11 does not answer the question.

Unlike the debt-limitation provisions in other jurisdictions, Section 11 does not specify the particular interval of time when the debt limit computation is to be determined. *Cf. Allen*, 184 N.E.2d at 27 ("No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two percent of the value of the taxable property within such corporation, *to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness* ....") (quoting Article 13, § 1 of the Indiana Constitution) (partial emphasis added). Notwithstanding such omission in Section 11, we conclude that the value of property must necessarily be based on the tax roll in effect at the time the debt is incurred. Debt limits are generally calculated based on the value of property listed at the time the governmental debt is incurred. *State v. Spring*

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quate security underlying the debt. This is especially so in light of the fact that the legislature may increase the tax rate (*i.e.*, the levy), to satisfy the government's debt. It is a different thing altogether to say that the government can incur debt based on property it has chosen not to tax at all. Such exempt property cannot possibly generate revenue, thus does not secure the debt, and therefore should not be included in the determining the debt limit at the present time.

City, 260 P.2d at 527, 529 (Utah 1953) ("It is true that the validity of an indebtedness should be determined as of the time when it is incurred.... If, therefore, the bonds in question were valid when issued, they do not become invalid because of the fact that the defendant Spring City ended the year 1948 with a deficit."). Thus, it is at that time that the debt limit should be determined.

Under Guam law, the tax assessor is required to make a new tax list each year. Title 11 GCA § 24305 (1996) ("Annually, on or before the first day of September, the assessor shall ascertain all the taxable property in Guam and shall assess it to the persons owning or claiming it on the first Monday in March of that year at the value as determined in accordance with § 24306."); Title 11 GCA § 24320 (1996) ("The assessor shall prepare an assessment roll in which shall be listed all property which it is the duty of the assessor, to assess."). The annual tax roll is to be certified by the Secretary of the Board of Equalization by October 31st of each year. *See* Title 11 GCA § 24518 (1996). These annual lists contain the property valuations for property on Guam. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Exempt property is also noted on the annual roll. *See* Decl. of Artemio B. Ilagan, ¶¶ 19-23 (July 7, 2003). Thus, the most recent tax roll, which contains the most recent tax valuations, should be used to determine the government's debt limit.

[11] Therefore, in determining the government's current debt limit, we use the appraised valuations of property as certified in the 2002 tax roll. In so doing, we reject the AG's contention that the 2002 tax list cannot be relied upon because it was computed in violation of 11 GCA § 24306, which provides that property on Guam be revalued every three years. As emphasized by the AG, the last triennial valuation required under 11 GCA § 24306 was conducted in 1993, and became effective in 1995. The AG argues that because a valuation has not been conducted since then, and because there is evidence that the property values on Guam have severely depreciated since that time, the 2002 tax list

cannot be relied upon in determining the government's current debt limit. We disagree.

Title 11 GCA § 24306 as it existed prior to amendment by P.L. 27- 21, (hereinafter "11 GCA § 24306 (1996)"), provided in relevant part:

> Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307.

11 GCA § 24306 (1996). Under 11 GCA § 24307, the tax valuations for the years intervening the triennial valuations are to be based on the last triennial valuation as updated pursuant to section 24307. Specifically, section 24307 requires the tax assessor to ascertain the value of all property which has become taxable since the last valuation, such as new improvements to real property, or has changed in value due to a change in use, destruction, or other loss. Title 11 GCA § 24307 (1996).

On June 25, 2003, P.L. 27-21 was enacted, which amended 11 GCA § 24306 to provide that if the tax assessor fails to conduct the triennial valuations of property in Guam as required under that section, then the "*last completed* valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under this Chapter." Guam Pub. L. 27-21, § 1 (June 25, 2003). Essentially, P.L. 27-21 identifies the manner in which the annual assessments are to be generated if the required triennial valuation is not conducted.

Notwithstanding the recent amendment to section 24306, for purposes of determining the debt limit we are constrained to determining the sufficiency of the 2002 list with regard to the law at the time the list was certified. The amendment to section 24306, pursuant to P.L. 27-21 is not relevant here because it was not in effect at the time the 2002 tax roll was certified. The procedure for establishing

annual tax valuations announced in section 24306 *as amended* cannot work to retroactively affect the valuations contained in the 2002 tax roll.

At the outset, we agree with the AG that the fact that the Organic Act does not include a requirement that tax valuations be conducted at a particular frequency indicates that the Congress gave the legislature the authority to determine the frequency of valuations for assessment purposes. The legislature's intent as to when tax valuations were to be conducted was evident at the time the 2002 tax roll was certified. Specifically, the legislature required, by statute, that property valuations be conducted every three years. 11 GCA § 24306 (1996).

[12] However, we do not find that the failure to undertake the triennial valuation required by 11 GCA § 24306 (1996) rendered the 2002 tax roll, and the valuations contained therein, invalid for purposes of ascertaining the debt limit. The reason is evident in the statutory language. Title 11 GCA § 24306 (1996) specifically provides that the triennial valuations "shall be used as the basis for *assessment* ...." 11 GCA § 24306 (1996). Thus, while the fact that the required triennial valuations were not conducted may affect the validity or accuracy of individual *tax assessments*, an issue we do not decide here, these triennial valuations are simply not required for purposes of determining the debt limit. With regard to the debt limit, we have already stated that the calculation is to be based on the most recent tax valuation as certified by the responsible government officer at the time the debt is incurred.

We further emphasize that it is unnecessary to address the AG's contention that the 2002 tax list cannot be used for taxation purposes because of the alleged decline in values of property on Guam. Such an inquiry concerning the accuracy of the tax list is more relevant in a case brought for the purposes of challenging the propriety of tax assessments, and in any event, necessarily requires the benefit of the fact-finding process and the mechanisms available in such proceedings. For purposes here, where the question is whether

the 2002 tax list can be relied upon in calculating the debt limit, all that is required is a determination of whether the 2002 tax list was developed in accordance with the sufficient procedures provided under the law. To the extent that sufficient procedures existed to ensure a fair and reasonable valuation, we are satisfied that the current tax list may be used to calculate the debt limit.[10]

A particular method of property tax valuation must be sustained unless the assessor's actions are "discriminatory or so unreasonable that property is substantially overvalued and thus injustice and illegality result...." *Uniroyal, Inc. v. Board of Tax Review*, 438 A.2d 782, 789 n.8 (Conn. 1981). The test for unreasonableness must be judged in the first instance by reference to the limits on the taxing power set forth under applicable law.

The only limit to the legislature's taxing power in the Organic Act is the requirement in Section 11 that taxes be *uniform*. 48 U.S.C.A. § 1423a ("Taxes and assessments on property ... may be imposed for the purposes of the government of Guam *as may be uniformly provided* by the Legislature of Guam."). The fact that the 2002 tax roll was based on a 1993 appraisal does not appear to violate the requirement of uniformity in the Organic Act, nor does it render the valuations in the 2002 list unacceptably discriminatory or unreasonable. In fact, other courts have found tax valuations spanning this length of time to be acceptable. *See Uniroyal, Inc.*, 438 A.2d at 787 (confirming the legislature's authority to determine that tax assessment valuations be conducted every ten years) ("The remedy of revaluation was established by the legislature and it was the judgment of the legislature that the remedy need only be available once each decade."); *cf. Allen*, 184 N.E.2d at 27 (quoting an Indiana statute, Chapter 316 of the Acts of 1959, as providing for the "reassessment, for taxation purposes, of all real estate and

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[10] This is not to foreclose the AG from challenging, in accordance with Guam law, the preparation of the 2002 tax roll list.

improvements made thereon in 1961 and *every eight years thereafter*").

[13] Moreover, there are mechanisms which exist in the statutory scheme to ensure the fairness of the valuations in the 2002 list. Under 11 GCA § 24307, the assessor is required to update the tax roll annually with information regarding new properties and the destruction of old properties. 11 GCA § 24307 (requiring the tax assessor, during the years between the triennial assessment, to "ascertain the value of all property ... which shall have become taxable since the last valuation, including new improvements or additions to old improvements ... and in the case of destruction or injury ... the value of which shall have been included in the former valuation of the property, the assessor shall determine the value of such loss and reduce the valuation accordingly."). Furthermore, property owners who claim a reduction in valuation based on the change in use of their property, or because of destruction or injury to the property, are required to file a report with the tax assessor by March 1st of the year in which the reduction is sought. Title 11 GCA § 24310 (1996). Similarly, with regard to reduction in appraisal values due to market forces, the law provides a mechanism to challenge an annual assessment. *See* Title 11 GCA § 24509 (1996) ("[A]ny person assessed, or his agent, may file with the Board [of Equalization] on or before September 15 [until October 15], a written application for equalization of his assessment or correction of the roll."), and Title 11 § 24511 (1996) ("The Board, *upon a showing of unreasonableness*, may increase or reduce any assessment ... throughout Guam.") (emphasis added). Thus, the law provides mechanisms to protect taxpayers from being taxed on an inaccurate assessment. A failure to file a report with the tax assessor claiming a devaluation based on change in use or destruction or injury to property results in the waiver of "of any right to such reduction in the valuation." 11 GCA § 24310. Similarly, a failure to file an application for equalization on or before October 15 for the alteration of the roll of any year bars a claim for alteration of the roll for that year. Title 11 GCA § 24510 (1996). Thus, the law forces property

owners to challenge the last tax list and the valuations contained therein. Presumably, taxpayers act in accordance with their rights and with the interest in not being subjected to higher taxes.[11] Because the tax lists are composed of property valuations which reflect values based on the last assessment in light of taxpayer challenges to property values, the valuations contained in the 2002 tax roll possess an indicia of reliability.

From our record, it appears that adequate procedures existed for arriving at the valuations in the 2002 tax roll. Furthermore, property owners have not been unduly deprived of their statutory rights to challenge assessments. Thus, we find that the 2002 tax roll was the product of a fair and reasonable valuation system. Accordingly, the 2002 tax list may be relied upon to determine the current debt limit under Section 11.

[14] Although this is not a contested suit in the traditional sense, we adopt the standard for such cases that the burden to show that a tax valuation system and the method-

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[11] In fact, there have been many appeals made to the Board of Equalization. We do note that there are over approximately 300 pending assessment appeals currently before the Board, several of which represent appeals by condominium or multi-family residences. *See* Decl. of Artemio B. Ilagan, ¶ 18 (July 7, 2003). These represent the appeals outstanding since 2000. This is indeed problematic to us. However, we do not find this detrimental to the analysis herein because of the representation that the Governor has appointed members to the Board who are awaiting confirmation. We can only presume that the Board members, when appointed, will act expeditiously in carrying out their duties as set forth under the law. We also find that most of the outstanding appeals were filed in 2001 and 2002, thus the backlog is for recent years. To the extent there becomes a backlog for a significant number of years, then we may have a clearer case that the valuation system is failing. Moreover, until those appeals are concluded, the presumption is that the assessments are correct. *See FMC Corp. (Peroxygen Chems. Div.) v. Unmack*, 677 N.Y.S.2d 269, 272 (N.Y. 1998) ("Our analysis begins with the recognition that a property valuation by the tax assessor is presumptively valid...."). Additionally, the numbers of appeals are not high in relation to the total number of land and building parcels on Guam, which, according to the record, exceeded 50,000.

ology employed therein is unreasonable rests with the person challenging them. *See* Title 11 GCA § 24511 (1996) (providing that the Board of Equalization may increase or reduce an assessment "upon a showing of unreasonableness"); *Uniroyal, Inc.*, 438 A.2d at 789 n.8. Here, the AG has not shown that the statutory procedures governing the establishment of the 2002 tax roll are inadequate for purposes of arriving at the current valuation. Accordingly, and in light of the fact that the 2002 tax list has not been invalidated by a court of competent jurisdiction in the appropriate case, we conclude that the 2002 list may be considered in calculating the government's current debt limit.

According to the documents in the record, the appraised values of the real property on Guam and structures thereon as certified on the 2002 tax roll is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion. In accordance with the 2002 list, the government's debt limit, calculated at 10% of the appraised value, is $1.11493 billion.

5. "Indebtedness"

The final issue before the court is whether the issuance of the bonds authorized under P.L. 27-19 would violate the Organic Act in light of our interpretation of Section 11. In calculating the debt limit pursuant to a constitutional debt-limitation statute, the court must: (1) determine the "aggregate tax value of property in Guam;" (2) calculate the amount which is 10% of that amount; (3) determine the outstanding "public indebtedness;" and (4) determine whether the indebtedness contemplated under P.L. 27-19, when added to the outstanding "public indebtedness," would exceed the 10% figure. *See Miller v. City of Glenwood*, 176 N.W. 373, 376 (Iowa 1920) ("An observance of ... [the constitutional debt-limit] provision involves: First, an inspection of the tax list to ascertain the amount of taxable property in value in the city; and, second, avoidance of debt beyond the limit of 5 percent of such value."). Having discussed the first

two issues relevant to the calculation, the remaining issues relate to the outstanding public indebtedness, and the indebtedness which may be created upon the issuance of the bonds.

Section 11 imposes a limit on "public indebtedness." 48 U.S.C.A. § 1423a. Thus, in determining the amount of current governmental debt, we must interpret the term "indebtedness."

Courts agree that the terms "debt" and "indebtedness" in the constitutional sense are not technical terms; but rather, should be viewed "in their broad, general meaning, of all contractual obligations to pay in the future for considerations received in the present." *Keller*, 49 A. at 782; *see also City of Hartford*, 493 N.W.2d at 51 ("[T]here is nothing technical about the meaning of debt in its constitutional sense."); *Knowlton v. Ripley County Mem'l Hosp.*, 743 S.W.2d 132, 136 (Mo. Ct. App. 1988) ("A debt is understood to mean an unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in the future, depending upon a condition precedent, which may never be performed, and which cannot ripen into a debt until performed.") (citation omitted). Similarly, debt, in a constitutional sense, has been characterized as an obligation in which the debtor is obliged to pay and the creditor has a right to receive and enforce payment. *City of Hartford*, 493 N.W.2d at 51 n.12; *State ex rel. Capitol Addition Bldg. Comm'n v. Connelly*, 46 P.2d 1097, 1100 (N.M. 1935) ("The idea of a 'debt' in the constitutional sense is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money, which the debtor is under a legal, equitable, or moral duty to pay without regard to any future contingency.") (citation omitted). Furthermore, debt only arises out of an obligation to pay money from funds to be provided in the future, as distinguished from funds presently on hand. *See City of Hartford*, 493 N.W.2d at 51; *see also Hodges v. Crowley*, 57 N.E. 889, 892 (Ill. 1900) (finding that debt in the constitutional sense is something payable in the

future because an obligation payable out of present funds is characterized as "one thing simply given and accepted in exchange for another") (citation omitted). Another recognized proposition is that constitutional debt limitations "comprehend[] a debt pledging for its repayment the general faith and credit of the state or municipality ... and contemplating the levy of a general property tax as the source of funds with which to retire the same." *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101. Finally, to constitute debt, the obligation "must be an absolute undertaking; if the municipality may avoid its obligation or if there remain conditions precedent to it, there is no indebtedness." *City of Hartford*, 493 N.W.2d at 51 n.13 (citation omitted). Thus, "executory and contingent contracts which are to be performed *in futuro* do not constitute an indebtedness against the municipal or quasi municipal corporation, in the sense of the constitutional inhibition, until such contracts have been performed."[12] *Knowlton*, 743 S.W.2d at 137 (recognizing that installment lease with the option for annual renewal were not debts) (citation omitted).

[15] As shown above, courts scrutinize the term "debt" in constitutional debt-limitation provisions with regard to both the nature of the obligation itself and the source of payment securing the obligation. From these principles, courts have recognized various types of obligations which are not included in the definition of "debt." Section 11 specifically excludes certain obligations from the debt calculation. Section 11 provides that "[b]onds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection." 48 U.S.C.A. § 1423a. We do not believe that the exclusion in Section 11 precludes us from otherwise interpreting the term "indebtedness" as used in

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[12] Because contingent obligations are not "debt" in the constitutional sense, the so-called "unfunded liability" obligations of the Retirement Fund are not "debt." This liability is contingent in nature.

Section 11. The most that can be said is that Congress intended that there be no question that certain obligations are not to be included in determining the amount of public indebtedness for debt-limitation purposes. Accordingly, we will interpret "indebtedness" in Section 11 with reference to the definition of "debt," which necessarily encompasses exclusions, recognized by other courts.

Whether certain governmental obligations constitute debts in the constitutional sense, and are thus to be included in the debt limit calculation, is a highly litigated issue. For purposes here, we will contain the analysis to the outstanding obligations evidenced in the record. The following is a list of outstanding obligations of the government of Guam as of December 31, 2002, set forth in the Declaration of Edward Untalan, the Finance and Economic Director of the Guam Economic Development and Commerce Authority:

1. Note to Farmers Home Administration ("Superior Court Note") secured by the Judicial Building Center and court fees	$6,678,135
2. Government of Guam General Obligation Bonds, 1993 Series A secured by the Full Faith and Credit of the Government of Guam	$135,235,000
3. Government of Guam General Obligation Bonds, 1995 Series A secured by the Full Faith and Credit of the Government of Guam	$50,020,000
4. Government of Guam $10 million loan as per P.L. 26-84 secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$10,000,000
5. Government of Guam Limited Obligation Infrastructure Improvement Bonds, 1997 Series A, secured by Hotel Taxes	$64,195,000
6. Government of Guam Limited Obligation Highway Refunding Bonds, 2001 Series	$47,875,000

A, secured by Liquid Fuel Taxes, Vehicle Registration and License Fees, etc.	
7. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001A, secured by Tobacco Settlement Receipts	$10,702,980.10
8. GEDA Tobacco Settlement Asset-Backed Bonds, Series 2001B, secured by Tobacco Settlement Receipts	$13,494,478.85
9. Government of Guam Limited Obligation (Series 30) Bonds, Series 2001A, secured by the pledge of Federal Government Section 30 monies and the Full Faith and Credit of the Government of Guam	$70,675,000
10. Revenue Bonds secured by the revenues generated by a government agency or instrumentality[13]	$774,360,656

[16] *See* Decl. of Edward Untalan, Exhibit A (July 7, 2003).

The total amount of these debts rounded upwards to the nearest dollar amounts to $1,183,236,250. Of that amount, the Revenue Bonds (Item 10) are not considered "debt" because they are fully payable and secured only by the revenue generated from public improvements or undertakings. *See* 48 U.S.C.A. § 1423a ("Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this subsection.").

Similarly, the Superior Court Note (Item 1), which is secured by court fees and a mortgage on the judicial center

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[13] This Item represents 13 separate bond issuances with outstanding amounts due. All of these bonds are payable directly from the revenues of the government entity.

building, is similarly not "debt" because the obligation is secured by a pledge of the fees payable to the court which are revenues from a public undertaking. *Id.* Additionally, the fact that the building is used to secure the note does not render the note a debt because there is no pledge of the general revenue for its payment. *See Lerch v. Md. Port Auth.*, 214 A.2d 761, 772 (Md. 1965). In *Lerch v. Maryland Port Authority*, the court recognized the majority view that "the acquisition of property by a municipality under an agreement whereby the cost thereof is to be paid out of the revenue from the property itself does not give rise to a debt ... within the meaning of a constitutional or statutory limitation of indebtedness, although the property so acquired is encumbered by a mortgage or lien to secure the payment of the cost thereof, where the encumbrance does not attach to any other property of the municipality...." *Id.* (citation omitted). Although the court there considered a debt-limitation provision significantly different from ours, we agree with the rationale that the pledge of a structure to secure the payment of bonds or other obligation issued to finance its construction is not "debt" because "the municipality can walk away from the obligation none the poorer. From the point of view of assets and revenues available for expenditure it is in the same position after entering into these obligations as it was before." *Id.* at 774 (citation omitted) (distinguishing obligations secured by previously existing property from obligations secured by property which is to be constructed with the bond proceeds, the latter of which is not "debt"); *City of Hartford*, 493 N.W.2d at 52 ("According to the pre-existing asset doctrine, an obligation is not debt in the constitutional sense if it is neither 1) a general obligation of the municipality entitling the creditor to look to the municipality's revenue for repayment nor 2) secured by any asset owned by the municipality *prior to its incurring the obligation.*") (emphasis added).

Furthermore, the bonds secured by the tobacco settlement money (Items 7 and 8) are not considered "debts" because they are secured by a "special fund" which is not funded by revenue derived from taxation, and the obligation

does not now, or cannot in the future, burden the general fund. *Bd. of State Harbor Comm'rs v. Dean*, 258 P.2d 590, 592 (Cal. Dist. Ct. App. 1953). "[A] limitation upon municipal indebtedness is not violated by an obligation which is payable out of a special fund, if the municipality is not liable to pay the same out of its general funds should the special fund prove to be insufficient, *and the transaction by which the indebtedness is incurred cannot in any event deplete the resources of the municipality.*" *Id.* (emphasis added) (citation omitted).

[17] We do find, however, that the bonds secured by other taxes such as hotel tax and fuel tax (Items 5 and 6), which are part of the general fund, constitute "debts" for purposes of the debt-limitation provision. These bonds are not secured by "the revenues derived from a public improvement or undertaking" and thus do fall within the obligations excluded from "indebtedness" in Section 11. Furthermore, these bonds do not fall within the special fund doctrine. We agree with the jurisdictions which hold that "an obligation to be funded from general tax revenues, whether they be *ad valorem* or excise taxes, is a 'debt' within the meaning of the debt-limitation provision." *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 697 (N.D. 1984). By accepting the argument that "a pledge of any specific tax revenues would be sufficient to invoke the 'special fund' doctrine, the constitutional debt limitation would be largely nullified, since the legislature could exempt almost any obligation from its strictures merely by identifying a specific tax from which the obligation could be paid." *Id.* at 698 (citation omitted). "Under this contention the Legislature ... could divide the public revenue into numerous subdivisions, calling one the 'road fund,' another the 'school fund,' ... and others almost without limit. Debts could then be contracted in unlimited amounts and payable in the far distant future, and still be immune from attack as violating constitutional provisions limiting indebtedness.... A mere statement of the

proposition carries with it, it seems to us, its own refutation." *Id.* (citation omitted).[14]

All other items listed above pledge the full faith and credit of the government, and are thus "debts" in the constitutional sense and are to be added to the overall government indebtedness. *State ex rel. Capitol Addition Bldg. Comm'n*, 46 P.2d at 1101 (debt is an obligation "pledging for its repayment the general faith and credit of the state or municipality ... and contemplating the levy of a general property tax as the source of funds with which to retire the same.").

The Governor also admits that in addition to the bond obligations listed above, there is currently an estimated deficit of $10,642,709. The Governor argues that these amounts are not debts under Section 11 because they are obligations made in anticipation of revenues for the fiscal year. We agree. Obligations which are part of current expenses, and are expected to be paid from current revenues, are not debt. *See City of Waycross v. Tomberlin*, 91 S .E. 560, 561 (Ga. 1917); *Wilkes County v. Mayor and Council of Washington*, 145 S.E. 47, 53 (Ga. 1928) ("Before a liability for a legitimate current expense can be incurred by a municipality without creating a debt ... there must, at the time of incurring the liability, be a sufficient sum in the treasury which can be lawfully used to pay the liability incurred, or there must be authority and ability to raise a sufficient sum to discharge the liability by taxation during the current year ....") (citation omitted). The current obligations identified are not "debts" because they are not payable in the future from taxes to be collected beyond the fiscal year.

[18] In his Opening Brief, the AG identifies several other obligations, not treated above, which he believes should be included in the calculation of the current outstanding debt. These include:

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[14] We note that the court in *Olson* discussed the meaning of "debt" under a significantly different debt-limitation provision, however, again, we find that court's logic to be compelling for application with regard to the limit contained in Section 11.

1. Utility Payments to GPA	$30,400,000
2. Payments to the Retirement Fund	$25,300,000
3. Vendor Payables	$5,300,000
4. Withholding Tax Payments from 2002	$15,400,000
5. Past Due Income Tax Refunds	$139,200,000
6. Past Due Obligations for the current year	$80,000,000
7. Receivables through May 30, 2003 due to the Gov't of Guam Retirement Fund	$130,500,000
8. Department of Education Debt	$21,000,000

We do not find that any of these items are "debt" under Section 11. These items appear to have been incurred with the purpose of payment out of revenues for the years that they were incurred. Thus, at the time they were incurred they were current obligations, and they have not changed in form merely because they were not paid as contemplated during the fiscal years in which they became due.

Accordingly, in light of the foregoing, the total amount of "public indebtedness" is $378,000,000. As stated earlier, according to the 2002 tax list, the appraised value of the real property on Guam and structures thereon is $11.333 billion. *See* Decl. of Artemio B. Ilagan, ¶ 22 (July 7, 2003). Approximately $183.7 million of the total represents exempt property. Decl. of Artemio B. Ilagan, ¶ 23 (July 7, 2003). Thus, the appraised value of non-exempt property is $11.1493 billion, rendering the government's debt limit, calculated at 10% of the appraised value, to be $1.11493 billion.

The final remaining issue is whether the issuance of the bonds as authorized by P.L. 27-19 will cause the government to exceed the debt limit. We find that it would not. Even assuming the total amount of bonds authorized (totaling $418,309,857) are issued, and assuming that all bonds issued under P.L. 27-19 are considered "new" debt to be added to

the government's current indebtedness of $378,000,000, the debt limit of $1.11493 billion would not be exceeded.[15]

IV.

Section 11 of the Organic Act limits the public indebtedness of Guam to 10% of the "aggregate tax valuation of the property on Guam." This debt limit is to be calculated on the appraised value of the real or personal property currently subject to taxation. The appraised values of such property should be taken from the tax roll in effect at the time the debt is incurred. We find that the 2002 tax list is appropriate for use in calculating the government's current debt limit notwithstanding that the last valuation of the property on Guam was conducted in 1993. Based on the valuations provided in the 2002 tax list, and considering the current outstanding debt of the government of Guam, the issuance of bonds authorized under P.L. 27-19 would not violate Section 11 of the Organic Act.

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[15] It is worthy of mention that the bonds under P.L. 27-19 which may be used to fund an escrow to pay debt service on the 1993 Series A bonds are not "debt." *See Keeney v. Kanawha County Court*, 175 S.E. 60, 61 (W.Va. 1934). "[T]here is ... overwhelming authority to the effect that the issuance of refunding bonds is not the creation of a new debt, but is simply a change in the form of the old and in the evidence representing it." *Id.*

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN, Petitioner, v. FELIX P. CAMACHO Respondent.	No. 03-72836 D.C. No. CR-03-00001-CRQ District of Guam, Agana ORDER

[STAMP: FILED Oct. 23, 2003
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

Before: WARDLAW, BERZON and CLIFTON,
Circuit Judges

The petition for a writ of certiorari to review a final decision of the Supreme Court of Guam is granted. The Clerk of the Supreme Court of Guam shall file the certificate of record with the Clerk of this court by November 17, 2003. *See* 9th Cir. R. 6-2(g), (h). Petitioner's opening brief on review is due December 29, 2003; respondent's answering brief is due January 28, 2004; and petitioner's optional reply brief is due 14 days after service of the answering brief. Briefing shall comply with Federal Rule of Appellate Procedure 32.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN, Petitioner, v. FELIX P. CAMACHO Respondent.	No. 03-72836 D.C. No. CR-03-00001-CRQ District of Guam, Agana ORDER

[STAMP: FILED Mar. 6, 2006
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

On October 30, 2004, Congress amended 48 U.S.C. § 1424-2 and withdrew the Ninth Circuit's jurisdiction to review appeals from Guam courts. This court recently held in *Santos v. Guam*, 436 F.3d 1051, 1052-54 (9th Cir. 2006), that all appeals from Guam courts currently pending in the Ninth Circuit, regardless of the date filed, must be dismissed for lack of jurisdiction. This appeal, therefore, is **DISMISSED.**

APPENDIX D

ORGANIC ACT OF GUAM
(excerpts)

48 U.S.C. § 1421g

(a) Public health services

Subject to the laws of Guam, the Governor shall establish, maintain, and operate public-health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

(b) Public educational system

The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain, and operate public schools according to the laws of Guam.

(c) Office of Public Prosecutor; Office of Public Auditor

The Government of Guam may by law establish an Office of Public Prosecutor and an Office of Public Auditor. The Public Prosecutor and Public Auditor may be removed as provided by the laws of Guam.

(d) Attorney General

(1) The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam. At such time as the Office of the Attorney General of Guam shall next become vacant, the Attorney General of Guam shall be appointed by the Governor of Guam with the advice and consent of the legislature, and shall serve at the pleasure of the Governor of Guam.

(2) Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam by the qualified voters of Guam in general

elections after 1998 in which the Governor of Guam is elected. The term of an elected Attorney General shall be 4 years. The Attorney General may be removed by the people of Guam according to the procedures specified in section 1422d of this title or may be removed for cause in accordance with procedures established by the legislature in law. A vacancy in the office of an elected Attorney General shall be filled—

(A) by appointment by the Governor of Guam if such vacancy occurs less than 6 months before a general election for the Office of Attorney General of Guam; or

(B) by a special election held no sooner than 3 months after such vacancy occurs and no later than 6 months before a general election for Attorney General of Guam, and by appointment by the Governor of Guam pending a special election under this subparagraph.

48 U.S.C. § 1422

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam." The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified.

No person who has been elected Governor for two full successive terms shall again be eligible to hold that office until one full term has intervened.

The term of the elected Governor and Lieutenant Governor shall commence on the first Monday of January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of Guam and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in Guam during his incumbency.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this chapter. He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities. He may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, proclaim the island, insofar as it is under the jurisdiction of the government of Guam, to be under martial law. The members of the legislature shall meet forthwith on

their own initiative and may, by a two-thirds vote, revoke such proclamation.

The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body.

There is hereby established the office of Lieutenant Governor of Guam. The Lieutenant Governor shall have such executive powers and perform such duties as may be assigned to him by the Governor or prescribed by this chapter or under the laws of Guam.

48 U.S.C. § 1423a

The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valua-

tion of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section. All bonds issued by the government of Guam or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the government of Guam, or by any State or Territory or any political subdivision thereof, or by the District of Columbia. The Secretary of the Interior (hereafter in this section referred to as "Secretary") is authorized to guarantee for purchase by the Federal Financing Bank bonds or other obligations of the Guam Power Authority maturing on or before December 31, 1978, which shall be issued in order to refinance short-term notes due or existing on June 1, 1976 and other indebtedness not evidenced by bonds or notes in an aggregate amount of not more than $36 million, and such bank, in addition to its other powers, is authorized to purchase, receive or otherwise acquire these same. The interest rate on obligations purchased by the Federal Financing Bank shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum, plus 1 per centum per annum. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee provision of the previous sentence until December 31, 1980. The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may, with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank; and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31,

1990, and shall bear interest at a rate determined in accordance with section 2285 of Title 12. At the request of the Board of Directors of the Guam Power Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for—

(a) substantially equal semiannual installments of principal and interest;

(b) maturity of obligations no later than December 31, 2004;

(c) authority for the Secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors or the general manager of the Guam Power Authority, and (1) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (2) contract for the management of the Guam Power Authority; and

(d) an annual simple interest rate of seven per centum; and

the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements

of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, note from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven per centum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would otherwise be determined in accordance with the above cited section 2285 of Title 12. Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 1421h of this title. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the government of Guam which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the government of Guam or the Guam Power Authority pursuant to this guarantee. For the purpose of this chapter, under section 3713(a) of Title 31 the term "person" includes the government of Guam and the Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

48 U.S.C. § 1424-2 (2000)

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other

matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters proceedings: *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1424-1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

48 U.S.C. § 1424-2 (as amended in 2004)

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.

APPENDIX E

GUAM CODE ANNOTATED
(excerpts)

Guam Code Ann. tit. 2, § 1112

Upon the election of the Speaker, the Legislature shall proceed to organize, adopting rules governing its procedure and with the election of a Vice-Speaker, Legislative Secretary and Secretary General of the Guam delegation to the Asian Pacific Parliamentarians Union, who shall be members of the Legislature, and the following attaches: Sergeant-at-Arms, Chaplain, Recording Secretary, and Legislative Counsel, none of whom shall be a member of the Legislature. All such officers shall be elected for the entire term of the Legislature and shall serve during all regular and special sessions thereof, unless otherwise ordered by a majority vote of the Legislature.

Guam Code Ann. tit. 5, § 1512

(a) Authorization of Issuance of Bonds. The Governor of Guam, *I Maga'lahen Guåhan*, is authorized to issue one or more series of bonds of the government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount necessary to provide Two Hundred Eighteen Million Three Hundred Nine Thousand Eight Hundred Fifty-Seven Dollars ($218,309,857) for the payment of the General Fund expenses listed in subsection (m) (other than subsection (m)(vii) of this Section) and in an aggregate principal amount necessary to provide Two Hundred Million Dollars ($200,000,000) for the payment of the General Fund expenses listed in subsection (m)(vii), and in each case to fund necessary reserves and to pay expenses incurred in connection with the issuance of such bonds not already included in an existing appropriation for or the regular budget of any government agency or instrumentality or public corporation providing any service in connection with the issuance of such

bonds; provided, however, that bonds may not be issued in an amount that would cause a violation of the debt limitation provisions of 48 U.S.C. § 1423a (§ 11 of the Guam Organic Act).

(b) Authorization of Issuance of Bond Anticipation Notes. The Governor, *I Maga'lahen Guåhan*, is also authorized to issue one or more series of bond anticipation notes of the government of Guam as provided in this Section, in an aggregate principal amount not to exceed the amount necessary to provide Fifty Million Dollars ($50,000,000) for any of the purposes for which the bonds described in subsection (a) of this Section are authorized. Unless otherwise expressly provided, the term "bonds" as used in this Section shall include the notes, but the term "notes" shall be limited to the bond anticipation notes. Participation of banks doing business on Guam shall not be restricted. The authorization in this subsection (b) for the issuance of the Bond Anticipation Notes shall be effective when the financing is approved by *I Liheslaturan Guåhan* [the Legislature] for the bonds authorized in subsection § 1512(a).

(c) Terms and Conditions Determined by Certificate or Indenture. The terms and conditions of the bonds shall be as determined by *I Maga'lahen Guåhan* [the Governor] by the execution of a certificate or indenture authorizing the issuance of the bonds upon or prior to the issuance of the bonds; provided, however, that such terms and conditions shall be consistent with this Section, and that the bonds shall mature not later than the year 2024, and shall bear interest at such rates and be sold for such price or prices as shall result in a yield to the bondholders not exceeding six and one-half percent (6.5%) per annum.

(d) Valid and Binding Limited Obligations. Except as may be determined by *I Maga'lahen Guåhan* [the Governor] in accordance with this subsection (d), any bonds authorized by this Section shall constitute the valid and legally binding limited obligations of the government of Guam payable from and secured by a pledge of the revenues described in subsection (e) of this Section. Any notes authorized by this Section

may also be payable from and secured by a pledge of the proceeds of the bonds authorized by this Section. As determined by *I Maga'lahen Guåhan* [the Governor], any bonds authorized by this Section may constitute the valid and binding general obligations of the government of Guam. To the extent *I Maga'lahen Guåhan* [the Governor] makes such a determination (i) the government of Guam pledges its full faith and credit for the punctual payment of both principal of and interest on the bonds and covenants that there shall be collected annually in the same manner and at the same time as government revenue for other purposes is collected, such sum as is required to pay the principal of and interest on the bonds, (ii) such pledge shall be valid and binding from the time the pledge is made, and (iii) there are hereby appropriated from the General Fund such sums as will equal in each year the amount of money necessary to pay the principal and interest on such bonds. All officers charged by law with any duty in the collection of the revenues of the government from which debt service on the bonds will be payable shall do every lawful thing necessary to collect such sum. The validity of any such bonds shall not be affected by the validity or regularity of any proceedings for the payment of the General Fund expenses funded by the bonds.

(e) Source of and Security for Payment. Except as may be determined by *I Maga'lahen Guåhan* [the Governor] in accordance with subsection (d) of this Section, the bonds shall be made payable solely from, and shall be secured solely by a pledge of, any or all of the revenues derived by the government of Guam from taxes against persons on account of their businesses and other activities in Guam whether now or hereafter imposed or levied by the government pursuant to 11 GCA § 26201 or any other provision of law (collectively, the "Revenues") and shall not be payable from or secured by any other source or sources of revenue except as may be authorized by statute, except that the notes may also be payable from and secured by a pledge of the proceeds of the bonds. Any such pledge made hereunder shall be valid and binding from the time the pledge is made. The revenues pledged and thereafter received by the gov-

ernment of Guam or by any trustee, depository or custodian shall be deposited in a separate account and shall be immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the government of Guam or such trustee, depository or custodian, irrespective of whether the parties have notice thereof. The indenture or certificate by which such pledge is created need not be recorded. Any such pledge may be made subordinate to the use of Revenues to pay existing general obligation debts of the government of Guam.

(f) Appropriation of Revenues. All Revenues are hereby appropriated for the purposes of paying the principal and interest on the bonds issued pursuant to this Section and the obligations incurred by the government pursuant to subsections (j) and (k) of this Section. Revenues released from the lien of the indenture or certificate pursuant to which the bonds are issued shall be available for appropriation by *I Liheslaturan Guåhan* [the Legislature] for any other lawful purpose.

(g) Additional Bonds. Nothing in this Section shall be construed to prevent the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by revenues on a parity with or subordinate to the bonds authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued. Nothing in this Section shall be construed to prevent the government of Guam from issuing, after appropriate enabling legislation, other obligations of the government secured by the general obligation of the government on a parity with or subordinate to the bonds authorized by this Section on such terms as may be provided by the indenture or certificate pursuant to which the bonds are issued.

(h) Waiver of Immunity; Submission to Jurisdiction. Notwithstanding any substantive or procedural provision of Chapter 6 of Title 5, Guam Code Annotated, the government

of Guam waives immunity from any suit or action in contract on the bonds, but does not waive sovereign immunity as to the personal liability of elected officials and employees of the government of Guam. The government hereby submits to jurisdiction of the Federal District Court for the District of Guam for purposes of any such suit or action in contract on the bonds.

(i) No Personal Liability. No employee or elected official of the government of Guam shall be individually or personally liable for the payment of any amounts due on any bonds issued under this Section, or for any other liability arising in connection with the bonds; provided, however, that nothing in this Section shall relieve any employee or elected official from the performance of any ministerial duty required by law.

(j) Form of Bonds; Covenants; Appointment of Fiduciaries. The technical form and language of the bonds, including provisions for execution, exchange, transfer, registration, paying agency, lost or mutilated bonds, negotiability, cancellation and other terms or conditions not inconsistent with this Section, including covenants relating to the collection of revenues, shall be as specified in the certificate or indenture executed by the Governor, *I Maga'lahen Guåhan*, authorizing the issuance of the bonds. The certificate or indenture shall appoint one or more trustees, co-trustees or other fiduciaries authorized to receive and hold in trust the proceeds of the bonds and moneys relating thereto, to protect the rights of bondholders and to perform such other duties as may be specified in the indenture. The Governor, *I Maga'lahen Guåhan*, is also authorized to execute, on behalf of the government of Guam, any appropriate agreements, certificates or other instruments relating to the bonds and the sale of bonds.

(k) Authorization for Credit Enhancement. The Governor, *I Maga'lahen Guåhan*, is authorized to enter into such contracts or agreements with such banks, insurance companies or other financial institutions as he determines are necessary or desirable to improve the security and mar-

ketability of the bonds issued under this Section. Such contracts or agreements may contain an obligation to reimburse, with interest, any such banks, insurance companies or other financial institutions for advances used to pay principal of or interest on the bonds and to indemnify any such banks, insurance companies or other financial institutions for costs and expenses incurred in connection with any such advance. Any such reimbursement obligation and any other obligations of the government under such contracts or agreements shall be payable solely from, and secured solely by a pledge of, revenues or in the case of any such obligations related to bonds determined by *I Maga'lahen Guåhan* to be general obligations of the government of Guam in accordance with subsection (d) of this Section, may be general obligations of the government of Guam as determined by *I Maga'lahen Guåhan*, and any such advance, if necessary, shall be treated for Organic Act purposes as creating an obligation issued to refund the bonds.

(l) Use of Proceeds from the Sale of the Bonds. The proceeds from the sale of the bonds shall be used to (i) to retire any previously issued notes authorized under Subsection (b) of this § 5112, (ii) pay the General Fund expenses described in subsection (m) of this § 5102 and which are otherwise appropriated by the Legislature, *I Liheslaturan Guåhan*, (iii) establish necessary reserves, (iv) pay expenses relating to the authorization, sale and issuance of the bonds, including, without limitation, printing costs, costs of reproducing documents, credit enhancement fees, underwriting, legal, financial advisory and accounting fees and charges, fees paid to banks or other financial institutions providing credit enhancement, costs of credit ratings and other costs, charges and fees in connection with the issuance, sale and delivery of the bonds, and (v) fund capitalized interest on the bonds for a period ending not later than thirty (30) months.

(m) General Fund Expenses. The General Fund expenses authorized to be paid with the proceeds of the bonds are as follows:

(i) Income tax refund payments $139,200,000

2001 individual income tax refund $39,500,000; 2000 and prior years estimated individual income tax refund $2,700,000 and estimated corporate refund $25,000,000; 2002 estimated individual and corporate tax refund $72,000,000;

(ii) utility payments to Guam Power Authority $30,450,800

payments owed by Department of Education $15,284,200; payments owed by Department of Public Works $13,324,650; payments owed by Guam Memorial Hospital Authority $1,841,950*
(*denotes amounts to be offset against monies owed for the Medically Indigent Program to GMH);

(iii) retirement fund payments $25,285,057

payments owed by the General Fund for Supplemental Annuities $5,086,734; payments owed by the General Fund for retirement contributions for line agency employees $10,088,437; payments owed by the General Fund for retirement contributions for Guam Public School System $10,109,886;

(iv) withholding tax payments $15,398,763

2002 payroll obligations for line agencies

(v) General Fund Vendor payables thru 09/30/02 $5,263,609

payments owed by line agencies for vendor payables $2,519,750; payments owed by Department of Administration to MIP/Medicaid vendors $2,219,524; payments owed by the Guam Public School System for vendor payables $524,335;

(vi) public school repairs $2,711,628

Southern High School air-conditioning system replacement $1,000,000; Jose Rios

Middle School earthquake repair $164,000;
school repairs $1,547,628;

Total	$218,309,857

(vii) to fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at a matched maturity.

(viii) The payments authorized in this subsection (m) shall, when paid, apply to any existing appropriation for the same items in the FY2003 or prior year Appropriations Acts, and shall not constitute double appropriations.

The net proceeds from the sale of the notes (after the payment of the items described in subsections (l) (iii) and (iv) of this Section and the funding of any capitalized interest on the notes) shall be used first, to make past due utility payments to the Guam Power Authority in an amount up to Ten Million Dollars ($10,000,000), second, to make income tax refund payments.

(n) Permitted Investments. The proceeds of the bonds, and any revenues relating to such bonds, may be invested in, but only in, the types of investments permitted by the certificate or indenture pursuant to which such bonds are issued.

(o) Approval by Guam Economic Development and Commerce Authority. 12 GCA § 50103(k), provides that agencies and instrumentalities of the government of Guam shall issue bonds and other obligations only by means of and through the agency of the Guam Economic Development and Commerce Authority ("GEDCA"). No issue of bonds authorized by this Section shall be sold until the board of directors of GEDCA has adopted a resolution approving the sale of such issue.

(p) Approval of Voters Not Required. Notwithstanding 17 GCA §§ 17311 and 17312, the issuance of the bonds authorized by this Section shall not be required to be subject to the approval of, or placed before, the voters of Guam.

Guam Code Ann. tit. 5, § 3102

There is within the Executive Branch of the government of Guam, a Department of Law. The Attorney General is head of the Department of Law and the Chief Legal Officer of the government of Guam. The Attorney General shall be appointed by the Governor with the advice and consent of the Legislature for a four year term under the conditions set forth in § 3 0101 of this Title.

Guam Code Ann. tit. 5, § 22601

All contracts shall, after approval of the Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor.

Guam Code Ann. tit. 5, § 30101

(a) The Department of Law of the government of Guam shall be administered by the Attorney General of Guam, who shall be elected by the people of Guam for a term of four (4) years.

(b) A candidate for the position of Attorney General of Guam shall declare no political party affiliation. Candidates for Attorney General of Guam shall be subject to the same campaign and personal financial reporting requirements as apply to candidates for *I Maga'lahen Guåhan* [the Governor], as well as all laws pertaining to campaign contributions. No nominating petition shall be required of a candidate for Attorney General of Guam.

A candidate for the position of Attorney General of Guam shall file candidacy with the Guam Election Commission in the manner similar to a candidate for *I Maga'lahen Guåhan* [the Governor], *except* as is *not* consistent with this Section. There shall be no Primary Election for the position of Attorney General of Guam. All qualified candidates complying with the provisions of this Section shall be placed on the General Election ballot. In the General Election, the

candidate receiving the most votes, subject to the qualifications established by this Chapter, shall be certified by the Guam Election Commission as having won election to the position Attorney General. The Attorney General shall be sworn into and take office on the first Monday of the January following the General Election at which the Attorney General was elected and shall remain in office until the election and swearing in of a new Attorney General, *unless* removed from Office as provided for in this Section. The Attorney General shall:

(1) be at least thirty-five (35) years of age;

(2) be a citizen of the United States and a resident of Guam;

(3) be an active member in good standing of the Guam Bar Association on Guam for at least five (5) years immediately preceding his or her candidacy for Office, or an inactive member of the Guam Bar Association who, in the five (5) years preceding his election as an Attorney General has served as an elected official elected by the people of Guam or as a Public Auditor of Guam, or as a Justice of the Supreme Court of Guam or Judge of the Superior Court of Guam;

(4) not have been convicted of a felony; *and*

(5) not have been suspended from the practice of law in any jurisdiction for violation of ethical rules governing the practice of attorneys.

(c) The Attorney General of Guam may be removed in the same manner as provided under the Organic Act of Guam for the removal of *I Maga'lahen Guåhan* [the Governor]. As provided in the Organic Act of Guam, a vacancy in the position of Attorney General shall be filled:

(1) by appointment by *I Maga'lahen Guåhan* [the Governor] if such vacancy occurs less than six (6) months before a General Election for the Office of the Attorney General of Guam; ~~or~~

(2) by a special election held no sooner than three (3) months after such vacancy occurs, and no later than six (6) months before a general election for Attorney General of

Guam, and by appointment by *I Maga'lahen Guâhan* [the Governor] pending a special election under this Subparagraph.

Guam Code Ann. tit. 7, § 3103(a)

(a) The Supreme Court of Guam is established pursuant to 22A of the Organic Act of Guam and has such original and appellate jurisdiction as is prescribed by the Organic Act of Guam and by this Title. The Supreme Court shall consist of three (3) full-time Justices who shall be appointed by *I Maga'lahen Guâhan*, the Governor of Guam, subject to the advice and consent of *I Liheslatura*. Two (2) of the full-time Justices shall be Associate Justices and one (1) shall be Chief Justice, who shall be selected as provided herein.

Guam Code Ann. tit. 7, § 4104

The Governor, in writing, or the Guam Legislature, by resolution, may request declaratory judgments from the Supreme Court as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of the Governor and the operation of the Executive Branch, or the Guam Legislature, respectively. The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments shall not be available to private parties. The Supreme Court shall, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and shall render its written judgment thereon. Upon a writing, or resolution in the case of the Guam Legislature, by the party submitting the request for the declaratory judgment that the party wishes the Supreme Court to dismiss its petition for declaratory judgment, the Supreme Court shall no longer have jurisdiction and shall dismiss without prejudice the declaratory judgment case, provided that the request is filed with

the Supreme Court at any time before the Court renders its written decision.

Guam Code Ann. tit. 7, § 6101(a)

(a) Each Justice of the Supreme Court shall hold office for a term ending the 31st day of January following the first general election held after the expiration of ten (10) years since his or her appointment or election to office.

Guam Code Ann. tit. 11, § 24102

Unless the context otherwise requires, the following provisions shall govern the construction of this Chapter:

(a) *Property* means land and improvements on land;

(b) *Assessee* means the person to whom the property or a tax is assessed;

(c) *Lien* date means the time when taxes for any year become a lien on the property; this is noon on the first Monday in March in the year of assessment;

(d) *Tax deeded property* means property which has been sold to the government for taxes;

(e) *Tax sold property* means real property which has been sold to the government by operation of law for taxes and from which the lien of such taxes has not been removed;

(f) *Value, full cash value*, and *cash value* mean thirty-five per cent (35%) of the appraised value; *appraised value* means the amount at which property would be taken in payment of a just debt from a solvent debtor.

(g) The term *roll* shall mean and include any schedule of assessments on property subject to the payment of tax levied by this Chapter;

(h) *Property* shall be described for tax purposes in any manner sufficient to identify it: in the assessment, advertisement and sale of property for taxes, any abbreviations may be used if an explanation thereof appears on each page

of the roll, or in the front of each book of the roll, or if they are explained in the document in which they appear;

(i) If any act is required to be performed by this Chapter on or before a certain date and the date falls on a Sunday or holiday, the act may be performed on the next business day following with the same effect as if performed on the specified date;

(j) No act in any of the proceedings for raising revenue by taxation is illegal by reason of informality or because not completed within the required time;

(k) *Board* means Board of Equalization.

(l) *Aggregate tax valuation.* In the event that certification of the aggregate tax valuation of the property in Guam, as set forth in § 11 of the Guam Organic Act (48 U.S.C. § 1423a), is required, then the aggregate tax valuation of the property in Guam shall be certified as being one hundred percent (100%) of the appraised value of the property on Guam based on the last completed valuation conducted pursuant to 11 GCA § 24306, as supplemented by the annual adjustments provided for in 11 GCA § 24307. **[This subsection added by Pub. L. No. 27-21]**

Guam Code Ann. tit. 11, § 24306

For the calendar year 1977, the valuation of all property shall be the 1978 valuation as shown on the assessment roll of the government for 1976, provided, however, that in instances where property has been either improved or suffered loss in 1977, the assessor shall take into consideration such improvement or loss and adjust the assessment roll for such property accordingly. Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter, the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307. Notwithstanding any other provision of law, if the valuation provided for in this § 24306 is not

reascertained every three (3) years as required by this Section, then the last completed valuation as supplemented by the annual adjustments provided for in § 24307 shall be the property tax valuation used under this Chapter.

Guam Code Ann. tit. 11, § 24307

In each year other than the year of the triennial valuation the assessor shall ascertain the value of all property as of the first Monday in March which shall have become taxable since the last valuation, including new improvements or additions to old improvements, or which shall change in value because of a change in use; and in case of the destruction or injury by fire, flood, typhoon, storm or otherwise, or removal of any improvements of any kind, or of orchards, timber, or ornamental trees, the value of which shall have been included in the former valuation of the property, the assessor shall determine the value of such loss and reduce the valuation accordingly.

Guam Code Ann. tit. 11, § 24401

The following property is exempt from real property taxes and shall not be assessed:

(a) All property title to which is in the United States or the government of Guam;

(b) All property which is being used for public roads or easements;

(c) All property used exclusively for educational, religious, or other eleemosynary purposes;

(d) Property included in any cemetery in use as such and not conducted for profit.

(e) Property upon which the provisions of 21 GCA § 61504 prohibit the construction of buildings.

(f) Property use in active farming for at least eight (8) months in any tax year.

APPENDIX F

ORGANIC ACT OF THE VIRGIN ISLANDS (excerpts)

48 U.S.C. § 1401a

For the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put.

48 U.S.C. § 1403

To construct, improve, extend, better, repair, reconstruct, acquire, and operate any and all types of public works which shall include, but not be limited to, streets, bridges, wharves, and harbor facilities, sewers and sewage-disposal plants, municipal buildings, schools, libraries, gymnasia and athletic fields, fire houses, electric distribution systems or other work pertaining to electric systems, and other public utilities, including those owned or operated by the Saint Thomas Power Authority, or to clear slums, accomplish urban redevelopment or provide low-rent housing, negotiable general obligation bonds and other obligations may be issued by the government of the Virgin Islands or any municipality thereof: *Provided*, That no public indebtedness of any municipality thereof shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in such municipality and that no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in the islands. Bonds issued pursuant to sections 1403 to 1403b of this title shall bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not ex-

ceeding thirty years from the date thereof, may be payable at such place or places, may be sold at either public or private sale, may be redeemable (either with or without premium) or nonredeemable, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner, as shall be prescribed by the government of the Virgin Islands or of the municipality issuing the bonds. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile, shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed 4 per centum per annum, payable semiannually. All such bonds shall be sold for not less than the principal amount thereof plus accrued interest. All bonds issued by the government of the Virgin Islands or any municipality thereof, including specifically interest thereon, shall be exempt from taxation by the Government of the United States, or by the government of the Virgin Islands or any political subdivision thereof, or by any State, Territory, or possession or by any political subdivision of any State, Territory, or possession, or by the District of Columbia: *Provided further*, That the government of the Virgin Islands and any municipality thereof shall be obliged to levy and collect sufficient taxes for servicing any of the outstanding bonds, even if such taxation is required at a rate in excess of or in addition to the tax or tax rate of 1.25 per centum of the assessed value which is provided for in section 1401b of this title.

48 U.S.C. § 1574(b)(ii)(A)

(b) Government bonds; maximum amount; sale, interest, etc.

* * *

(ii)(A) Subject to the provisions of this paragraph (ii), the legislature of the government of the Virgin Islands may cause to be issued such negotiable general obligation bonds

or other evidence of indebtedness, including but not limited to notes in anticipation of the collection of taxes or revenues, as it may deem necessary and advisable for any public purpose authorized by the legislature: *Provided*, That no such indebtedness of the Virgin Islands shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in the Virgin Islands. Bonds issued pursuant to this paragraph (ii) shall bear such date or dates, may be in such denominations, may mature in such amounts and at such time or times, not exceeding thirty years from the date thereof, may be payable at such place or places, may be sold at either public or private sale, may be redeemable (either with or without premium) or nonredeemable, may carry such registration privileges as to either principal and interest, or principal only, and may be executed by such officers and in such manner, as shall be prescribed by the legislature of the government of the Virgin Islands. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signature, whether manual or facsimile, shall nevertheless be valid and sufficient for all purposes, the same as if such officers had remained in office until such delivery. The bonds so issued shall bear interest at a rate not to exceed that specified by the legislature. All bonds issued by the government of the Virgin Islands, including specifically interest thereon, shall be exempt from taxation by the Government of the United States, or by the government of the Virgin Islands or any political subdivision thereof, or by any State, territory, or possession or by any political subdivision of any State, territory, or possession, or by the District of Columbia.

(2)

No. 06-1116

Supreme Court, U.S.
FILED
AUG 24 2006
CLERK

In The

Supreme Court of the United States

DOUGLAS B. MOYLAN,
Attorney General of Guam,

Petitioner,

v.

FELIX P. CAMACHO,
Governor of Guam,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Guam

OPPOSITION TO A WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondent Governor Felix P. Camacho (the "Governor") adopts the question presented as stated by Petitioner.

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OPINIONS BELOW

The Governor adopts Petitioner's statement of the opinions below.

JURISDICTION

Petitioner is seeking untimely review of a Guam Supreme Court opinion issued on July 23, 2003, concerning the proper interpretation of Section 11 of Guam's Organic Act. Petitioner initially sought certiorari review by the Ninth Circuit Court of Appeals under 48 U.S.C. § 1424-2 (2000), which that court granted. However, effective October 30, 2004, Congress amended 48 U.S.C. § 1424-2 and divested the Ninth Circuit of certiorari review of final Guam Supreme Court decisions. *See* Act of Oct. 30, 2004, Pub. L. No. 108-378, 118 Stat. 2206 (codified at 48 U.S.C. § 1424-2). Yet, Petitioner failed at that time to file a petition with this Court despite the lack of jurisdiction in the Ninth Circuit.

Instead, as Petitioner admits, he waited until after the Ninth Circuit dismissed his appeal on March 6, 2006, and then on May 24, 2006, requested an extension of time from this Court to file his certiorari petition. (Pet. at 2). Justice Kennedy granted the request, and Petitioner filed his petition on July 19, 2006. But by then Petitioner already had permitted over eighteen months to pass between the time that the Ninth Circuit was divested of jurisdiction and his first filing in this Court.

This Court has held, in accordance with 28 U.S.C. § 2101(c), that the 90-day time limit for filing certiorari petitions is "mandatory and jurisdictional" and that it has

"no authority to extend the period for filing except as Congress permits." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990). Here, it is undisputed that Petitioner filed his petition more than 90 days after the Guam Supreme Court issued its decision. It also is undisputed that the Ninth Circuit ceased to have jurisdiction as of October 30, 2004. Jurisdiction lapsed and cannot be revived.

Petitioner fails to cite any precedent where this Court has accepted certiorari jurisdiction on analogous facts, or even recognized that such jurisdiction can exist. The statute cited by Petitioner, 28 U.S.C. § 2101(c), provides that a Justice of this Court may allow an extension of time to file the certiorari petition for good cause shown. *See* 28 U.S.C. § 2101(c). But Petitioner is not asking for an extension; he is asking that jurisdiction be revived after it had lapsed when no timely petition was filed. Similarly, Petitioner cites this Court's holding that the 90-day period is tolled *if* the petitioner files a timely petition for rehearing with the court below, *if* the court below decides to grant an untimely rehearing petition, or *if* the court below directs the parties to address whether rehearing should be ordered. *See Hibbs v. Winn*, 542 U.S. 88, 97-98 (2004). But in all of those situations, the court below continued to hold onto jurisdiction over the case. Here, there was no such motion filed with the Guam Supreme Court that kept the case within the lower court's jurisdiction prior to the petition being filed. Instead, the petition here was not filed until almost three years after the Guam Supreme Court rendered its decision on July 23, 2003.

The Petition should be denied or dismissed for want of jurisdiction.[1]

STATUTORY PROVISIONS INVOLVED

The Governor adopts Petitioner's statement of statutory provisions involved.

STATEMENT OF THE CASE

Petitioner seeks a grant of certiorari over a decision rendered by the Guam Supreme Court interpreting the debt limitation provision found in Section 11 of Guam's Organic Act, which is codified at 48 U.S.C. § 1423a (hereinafter "Section 11"). *See In Re Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Section 11 of the Organic Act of Guam*, 2003 Guam 16. (Pet. App. at 1a-35a). That decision permitted the Guam Legislature (the "Legislature") and Governor to proceed with bond borrowing they had authorized in a duly enacted local law that primarily sought to refinance existing debt and other obligations. It is a case concerning an issue of purely local concern to Guam that does not easily lend itself to a grant of certiorari by this Court.

[1] In the section of his brief devoted to why the Petition should be granted, Petitioner also includes argument regarding why this case satisfies the case or controversy requirements of Article III of the Constitution. (Pet. at 23-25). That issue more properly falls under the jurisdiction section. But in any event, the Governor agrees with Petitioner that this case would present a case or controversy within the meaning of Article III had a timely petition been filed, although the Petition should still be denied for the reasons discussed *infra*.

I. THE LEGISLATURE AUTHORIZES THE GOVERNOR TO ISSUE BONDS

On April 28, 2003, Bill 47 (COR) became Guam Public Law ("P.L.") 27-19 by signature of the Governor. (Pet. App. at 2a). Public Law 27-19 added a new § 1512 to Title 5, Guam Code Annotated ("G.C.A."),[2] which authorized the Governor to issue bonds: (i) of up to $218,309,587 for the purpose of paying certain government of Guam obligations, and (ii) in the aggregate principal amount necessary to provide $200 million to pay the debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A. *See* P.L. 27-19, § 2 (codified at 5 G.C.A. § 1512(a) and (b)).

Public Law 27-19 provided that the bonds authorized by that act "may not be issued in an amount that would cause a violation of the debt limitation provisions of 48 U.S.C. § 1423a (§ 11 of the Guam Organic Act)." P.L. 27-19, § 2 (codified at 5 G.C.A. § 1512(a)). Section 11 provides as follows with respect to the amount of indebtedness that can be incurred by the government of Guam:

> Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may

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[2] Public Law 27-19 contains several typographical errors in the codification of the Act. The correct codification is 5 G.C.A. § 1512; however, there are erroneous references to §§ 1520 and 5102. For the correct codification, *see* 5 G.C.A. § 1512, as published on the Guam Compiler of Laws website available at http://www.justice.gov.gu/CompilerofLaws/index.html.

> be issued by the government of Guam; *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a.

Subsequent to the enactment of P.L. 27-19, Petitioner, citing to Section 11, advised the Governor in a letter dated May 14, 2003 that he would not sign any contract for the issuance of bonds on the basis that such issuance would violate Section 11 of the Organic Act. (Pet. App. at 3a). Petitioner's position was based on his opinion that the government's debt-ceiling under Section 11 is based on the assessed value of property on Guam as determined by local law. (*Id.*) In other words, Petitioner concluded that the meaning of a federal law (Section 11) was dependent upon a local law (11 G.C.A. § 24102(f)).

Petitioner then refused to sign off on any bond indenture authorized by P.L. 27-19 on the asserted ground that such bonds might possibly exceed the debt-ceiling.

II. THE GOVERNOR FILES A DECLARATORY RELIEF REQUEST SEEKING THE GUAM SUPREME COURT'S INTERPRETATION OF "AGGREGATE TAX VALUATION OF PROPERTY ON GUAM" UNDER SECTION 11 OF THE ORGANIC ACT OF GUAM

On July 1, 2003, the Governor filed a request for declaratory judgment in the Supreme Court of Guam

pursuant to 7 G.C.A. § 4104. Section 4104 permitted the Governor to initiate an original action in the Guam Supreme Court for a declaratory judgment regarding the interpretation of a local statute or the Organic Act. *See* 7 G.C.A. § 4104. The Governor sought a declaratory judgment establishing that the issuance of bonds authorized in P.L. 27-19 would not violate Section 11.

The Guam Supreme Court accepted the Governor's request to decide this matter and granted Petitioner's request to intervene. (Pet. App. at 3a). The Guam Supreme Court specifically considered the issue of the meaning of "aggregate tax valuation." (Pet. App. at 5a).

The Governor and Petitioner both filed opening briefs in support of their respective positions, as well as briefs in opposition. Consistent with the position he had previously taken, Petitioner argued before the Guam Supreme Court that "aggregate tax valuation of property on Guam" must be interpreted to mean "value" as defined in local law as thirty-five percent (35%) of the appraised value of property on Guam. (Pet. App. at 7a).

After the expedited briefing was completed, the Guam Supreme Court heard oral arguments and issued an opinion on July 29, 2003. (Pet. App. at 1a-35a). Specific to the question being presented to this Court, the Guam Supreme Court held that the debt limitation set forth in Section 11 should be calculated based on the appraised value of the real and personal property on Guam currently subject to taxation. (Pet. App. at 14a-15a, 19a). The Guam Supreme Court rejected Petitioner's argument that "aggregate tax valuation" should be based upon the assessed value of real property. (Pet. App. at 11a ("After reviewing the language of Section 11, we disagree with Petitioner's

contention that *valuation* in Section 11 be interpreted as value under Title 11 G.C.A. § 24102(f).")). The Guam Supreme Court's conclusion was based upon an analysis of the plain meaning of "aggregate tax valuation of property on Guam" and a comparison of such language to the debt limitation provisions of the Virgin Islands and other jurisdictions. (Pet. App. at 10a-15a).

Finally, based on its holdings as to the meaning of "aggregate tax valuation of property on Guam" and "indebtedness," the Guam Supreme Court held that the issuance of the bonds authorized by P.L. 27-19 was proper under Section 11 of the Organic Act because Guam would remain well under its debt-ceiling. (Pet. App. at 34a-35a). The Guam Supreme Court found that the government's total current indebtedness stood at $378 million. (Pet. App. at 34a). Thus, the court concluded that even if the total amount of the bonds authorized by P.L. 27-19 were considered "new" debt, Guam's debt-ceiling of $1.114 billion would not be exceeded. (*Id.*)[3]

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[3] The Guam Supreme Court never considered what would be the total indebtedness of the government of Guam had the entire amount of bonds authorized by P.L. 27-19 actually been issued because it concluded that even if all of it were considered new debt, the government's total indebtedness would still be below the federal debt-ceiling. (Pet. App. at 34a-35a). However, because $200 million of the bonds authorized by P.L. 27-19 was designated to retire the Government of Guam General Obligation Bonds, 1993 Series A, the remaining par value of which was considered by the Guam Supreme Court as a part of Guam's current indebtedness of $378 million (Pet. App. at 29a-34a), the maximum amount by which the total indebtedness would have been increased is the $218,309,857 amount set aside to pay current government expenses; i.e., the total indebtedness would have been less than $600 million.

REASONS TO DENY THE PETITION

The petition should be denied because it involves solely an issue of local concern to the Territory of Guam as to which the Guam Supreme Court rendered a well-reasoned and correct response based on the plain language of the applicable statute.

Petitioner seeks to have this Court grant certiorari over an issue of statutory interpretation as to Section 11 of the Organic Act of Guam. Although this Court has Article III jurisdiction, it also has an established practice of deferring (absent an "obvious" error) to the decisions of the highest court of a territory interpreting a federal statute that applies solely to that territory. *Pernell v. Southall Realty*, 416 U.S. 363, 366-68 (1974). Here, Section 11 applies only to the Territory of Guam. Congress has not chosen to utilize similar language in the law applicable to any other territory.[4] There is no prior federal precedent interpreting Guam's debt-ceiling under this statute, and there is no conflict among federal or state court decisions.[5] The implications of this case thus affect only Guam.

The Guam Supreme Court's decision was a simple and correct reading of the plain language of Section 11. Petitioner's essential position is that Guam's borrowing is

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[4] The only federal statute to ever contain the same wording was 48 U.S.C. § 745. *See* Act of Mar. 2, 1917, ch. 145, § 3, 39 Stat. 951, 953 (Puerto Rico debt-ceiling provision). This debt-ceiling provision was deleted in 1961. *See* Act of Aug. 3, 1961, Pub. L. No. 87-121, § 2, 75 Stat. 245 (effective Dec. 10, 1961).

[5] The only previous case interpreting Section 11 is *Guam Tel. Auth. v. Rivera*, 416 F. Supp. 283 (D. Guam App. Div. 1976) (defining certain "contingency bonds" as public indebtedness).

limited by the current assessment rate adopted in local law. But Congress created no such restriction in the Guam Organic Act, which simply restricts borrowing to the "tax valuation" of property and not its "assessed valuation" (which is certainly language Congress was capable of using since it earlier employed it in the Virgin Islands Organic Act).

Petitioner's argument further fails to read the statute in the context of the Guam Organic Act as a whole, which grants to Guam a number of methods of raising revenue to repay debts (including income and sales taxes) and nowhere obligates Guam solely to repay its debts through its present property tax system. The purpose of the debt-ceiling is only to ensure that Guam has the capacity to repay its bonds through property taxes, not that it necessarily choose property taxes as that method. The Guam Supreme Court's decision was consistent with the canons of statutory interpretation and with decisions of state supreme courts that have interpreted similar limitations in their respective state constitutions. It is well grounded in policy and law. The Governor respectfully asks that the petition be denied.

I. THE PETITION PRESENTS A QUESTION OF SOLELY LOCAL CONCERN TO THE TERRITORY OF GUAM

This case involves a law that applies solely to the Territory of Guam and nowhere else. There is no other current federal enactment adopting the language of Guam's Organic Act relative to a federal debt-ceiling. The fact that this case is purely of local concern weighs heavily against a grant of certiorari.

This Court long ago adopted a rule of deference to the decisions of territorial courts where the case involved only a question of local concern. *E.g.*, *Santa Fe Cent. Ry. Co. v. Friday*, 232 U.S. 694, 700 (1914) ("We should not decide against the local understanding of a matter of purely local concern unless we thought it clearly wrong."); *De Castro v. Board of Comm'rs*, 322 U.S. 451, 454 (1944) (declining to overrule a territorial court on matters of local concern absent "clear" or "manifest" error or an "inescapably wrong" interpretation) (quoting *Sancho v. Texas Co.*, 308 U.S. 463, 471 (1940)). *See also Waialua Agric. Co. v. Christian*, 305 U.S. 91, 109 (1938) ("It is true that under the appeal statute the lower court had complete power to reverse any ruling of the [Hawaiian] territorial court on law or fact [footnote omitted] but we are of the opinion that this power should be exercised only in cases of manifest error."); *Matos v. Hermanos*, 300 U.S. 429, 432 (1937) (" 'recognizing the deference due to the understanding of local courts upon matters of purely local concern,' it becomes impossible for us to entertain 'a sense of clear error committed' by the [Puerto Rico] Supreme Court").

This Court also has established that a matter remains one of local concern even if a territorial decision involves federal law if that law (as here) is one that uniquely applies to the territory. *See Pernell*, 416 U.S. at 366-68 ("[t]his Court has long expressed its reluctance to review decisions of the courts of the District [of Columbia] involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application.") (citations omitted). As this Court explained as to a land ownership provision in Puerto Rico's

Organic Act,[6] such provisions are "peculiarly concerned with local policy," and not "designed for the protection of policies having general application throughout the United States." *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U.S. 543, 549-50 (1940).

Other federal circuit courts also have followed this Court's direction. For example, the First Circuit deferred to the Supreme Court of Puerto Rico's interpretation of a land use provision in the Puerto Rico Organic Act, even though that Act embodied "Congressional policy." *Campose v. Central Cambalache, Inc.*, 157 F.2d 43, 43-44 (1st Cir. 1946). And in a particularly striking case, the D.C. Circuit followed the interpretation of a federal workers' compensation statute that applied solely to the District of Columbia where that interpretation was rendered by the District's highest local court. *See Hall v. C&P Tel. Co.*, 793 F.2d 1354 (D.C. Cir. 1986). It did so even though Congress had enacted a national statute that used identical language and that had received a contrary interpretation by the federal courts. *Id.* ("this court [will] defer to the decisions of the District of Columbia Court of Appeals construing Acts of Congress that apply exclusively to the District of Columbia").

Following the precedent of this Court, the Ninth Circuit (which used to have certiorari jurisdiction over the Guam Supreme Court) has given similar deference to Guam Supreme Court rulings "on matters of local concern." *See Guam v. Guerrero*, 290 F.3d 1210, 1213-14 (9th Cir. 2002). As it has stated: "The Congressional promise

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[6] As discussed elsewhere, Puerto Rico's Organic Act was later replaced with a constitution.

of independent institutions of government would be an empty one if we did not recognize the importance of the Guam Supreme Court's role in shaping the interpretation and application of the Organic Act." *Gutierrez v. Pangelinan*, 276 F.3d 539, 547 (9th Cir. 2002).

The importance of permitting Guam's Supreme Court to develop its own body of law as to the Organic Act of Guam (except where plainly erroneous) is all the more significant now given a recent Congressional enactment. When Congress originally gave Guam authorization to create a supreme court, it provided in 48 U.S.C. § 1424-2 that the territory's high court would be subject to the Ninth Circuit's certiorari jurisdiction for the first fifteen years of existence. But in 2004, Congress repealed that portion of 48 U.S.C. § 1424-2 and abolished certiorari jurisdiction to the Ninth Circuit. *See* Act of Oct. 30, 2004, Pub. L. No. 108-378, 118 Stat. 2206 (codified at 48 U.S.C. § 1424-2). The result of this Congressional action is that the relationship of the Guam Supreme Court to this Court is now much more akin to that of a state supreme court. *See* 48 U.S.C. § 1424-2 (2006) (relations between federal courts and territorial courts of Guam, including as to certiorari, "shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States").

Congress' decision to place Guam's Supreme Court on a footing that is in most respects the same as a state supreme court strongly supports deference to its interpretation of Guam's Organic Act on matters of local concern. *See Pernell*, 416 U.S. at 367-68 (deference to decision of the highest local court of the District of Columbia was supported by 1970 Congressional laws that removed

certiorari jurisdiction by the D.C. Circuit over that local court). As in *Pernell*, the appropriate course here is to permit local law to develop on a matter of local concern such as the interpretation of Guam's debt-ceiling absent some "obvious" defect requiring intervention. *See id.* (despite the fact that the Court had the power to hear the matter under Article III, it would not reverse the local court's interpretation of a federal statute applicable solely to the District absent a showing of "obvious" error). Petitioner's brief falls far short of such a showing – indeed, as explained below, Petitioner cannot demonstrate any error, obvious or otherwise. Accordingly, certiorari is not warranted.

II. THE GUAM SUPREME COURT APPLIED THE CORRECT AND PLAIN READING OF THE LANGUAGE OF THE STATUTE

The Guam Supreme Court interpreted "aggregate tax valuation of the property in Guam" in Section 11 to mean the full, appraised value of the property on Guam actually subject to taxation. (Pet. App. at 2a, 35a). The court reached this ruling after considering and rejecting Petitioner's argument below that the terms "tax valuation" in Section 11 has the same meaning as the term "value" contained in a local statute governing Guam real property taxes. (*Id.* at 11a). *See also* 11 G.C.A. § 24102(f) (which defines the term "value" as "thirty-five percent (35%) of the appraised value" of property).

The Guam Supreme Court's decision was a simple and correct reading of the plain language of Section 11. As the court recognized, "value" is distinct from the term "valuation." "Value," which is the term used in the local statute, means the "monetary worth or price of something;" in

comparison, "valuation," which is the term used in the Organic Act, means the "process of determining the value of a thing or entity." Black's Law Dictionary 1548-49 (7th ed. 1999); *accord* Webster's Third New International Dictionary 2530-31 (2002). The local Guam law assigns a monetary "value" of 35% of the sale price to Guam property. *See* 11 G.C.A. § 24102(f). But the Guam Organic Act establishes a debt-ceiling based on the total potential "tax valuation" of the property on Guam. *See* 48 U.S.C. § 1423a.

As the Guam Supreme Court recognized, "the two statues were enacted by completely different legislative bodies, and . . . § 11 [of the Organic Act] was enacted prior to 11 G.C.A. § 24102(f)." (Pet. App. at 11a-12a).[7] Thus, there was no reason to believe Congress intended to have local law define any term in the Guam Organic Act. Indeed, it is self-evident that the Legislature lacks the authority to adopt Guam law that defines terms in the federal Organic Act like "aggregate tax valuation."

Petitioner's argument is further premised on the assertion that the Guam Supreme Court has failed to give meaning to the word "tax" as modifying "valuation." (Pet. at 14). However, the Guam Supreme Court gave due consideration to this issue. As the Guam Supreme Court

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[7] In so holding, the court adopted the reasoning set forth 14 years earlier in a Guam trial court decision, *Barrett-Anderson v. Crisostomo*, Civil Case No. CV0651-89 (Super. Ct. Guam Decision and Order Nov. 21, 1989). Petitioner argues that its "view accorded with the position adopted several years earlier by the Legislative Counsel, the Legislature's own internal legal adviser." (Pet. at 8). The view of former Legislative Counsel, however, was the one brought before the trial court in *Barrett-Anderson* and resoundingly rejected. The *Barrett-Anderson* decision is attached as Respondent's Appendix ("Res. App.") at 1a-21a.

correctly explained, "Congress must have meant something when it used the word 'tax' in the first part of the clause." (Pet. App. at 17a). But that meaning is simply achieved through the logical reading that "[b]y using the term tax valuation, it is clear that the debt limit is to be based on the value of the property being taxed." (*Id.*) Petitioner's effort to obtain some additional meaning from the word "tax" is unwarranted by Section 11's plain language.

As the Guam Supreme Court correctly held, Guam's ability to incur debt was related to, and should be consistent with, the "maximum power to tax granted [to the Guam government] by Congress." (Pet. App. at 14a-15a). As the court explained:

> Because Congress did not impose an assessment rate in the Organic Act, Congress clearly granted the legislature the power to impose taxes on the full market value of property. . . . Whether the [Guam] legislature chooses to levy based upon assessed values which are lower than actual value, or whether the legislature declines to tax the property at a rate necessary to satisfy the underlying obligations, are matters of policy and fiscal management. . . . The issue before us relates to the object upon which the debt limit in Section 11 is based, and basing it on appraised values is entirely consistent with the taxing authority granted to the legislature under the Organic Act.

(*Id.* at 15a).

Petitioner's strained reading of Section 11 would require that the Guam Legislature first raise Guam's property taxes from the current 35% rate before Guam

could borrow based upon the potential tax value of its property. (Pet. at 20). But the inherent interest in establishing a debt-ceiling such as Section 11 is to ensure that Guam has the *ability* to repay its debts by the particular method of taxing the property on Guam. A debt-ceiling tied to the maximum value of all property taxed achieves this end. Nothing in the statute's plain language indicates Congress meant to forbid *other* means of taxation or revenue raising to meet debt obligations.

To the contrary, Congress granted the government of Guam broad powers of taxation extending beyond property taxation. *E.g.*, 48 U.S.C. § 1421i (creating a Guam income tax); 48 U.S.C. § 1423a (permitting other forms of tax, including a sales tax). Therefore, the government of Guam can still incur indebtedness even if the Legislature chooses to assess real property taxes at 35% of its value, or not at all, because Congress intended for the Legislature to have the option to employ other forms of taxation to raise revenues and to pay off debt. For Petitioner to be correct that the debt-ceiling must be tied to the current as opposed to the potential rate of property tax assessment, one would have to completely ignore Congress' deliberate choice to grant the government of Guam broader taxation powers. *Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("The meaning of statutory language, plain or not, depends on context.") (quoting *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991)).

Petitioner further argues that the reason why the debt-ceiling should be tied to the "assessed" valuation of real property is because the level of borrowing would be otherwise "untethered to the Legislature's willingness to impose taxes on voters." (Pet. at 20). This argument, however, fails to pass the common-sense test. Taxpayers do not

pay the "assessed" value of their property in taxes, they pay the amount actually levied. Guam's assessed value of property is currently fixed at thirty-five percent, while its levy is fixed at one percent and one-quarter of one percent of the assessed value on improvements and land, respectively. 11 G.C.A. § 24103. Under Petitioner's theory, if the Legislature wanted to maximize the territorial debt-ceiling without enraging the tax-paying public, all it would need to do is increase the "assessed" value of property up to one hundred percent and decrease the rate of levy by a corresponding ratio. Thus, tying the debt-ceiling to the "assessed" valuation of real property simply does not "tether" borrowing to the Legislature's willingness to impose new taxes on voters.

The Guam Supreme Court also correctly contrasted the Organic Act of Guam to the Organic Act of the Virgin Islands, whose debt-ceiling language was enacted by the same Congress that enacted Guam's Organic Act just ten months earlier. In the Organic Act of the Virgin Islands, Congress based the debt-ceiling on "the *aggregate assessed valuation* of taxable real property." 48 U.S.C. § 1403 (enacted 1949) (emphasis added). By contrast, in the Organic Act of Guam the debt-ceiling was based on "the *aggregate tax valuation* of the property in Guam." 48 U.S.C. § 1423a (enacted 1950) (emphasis added).

The Guam Supreme Court properly concluded that had Congress intended that Guam's debt-ceiling would be limited by the "assessed" value of its property, Congress would have explicitly stated such, as it did in the Organic Act of the Virgin Islands. As the court explained: "This difference in the statutory language demonstrates that under the plain language of Section 11, the debt limit is not to be based on the *assessed* valuation of property." (Pet.

App. at 12a) (italics in original). This comparison to the language used by Congress just months earlier but not selected for Guam's Organic Act follows the same logic in the rule of statutory construction that a court will not hold that Congress enacted silently statutory language it had considered, but rejected. As this Court has stated: "'Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded.'" *Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 168 n.16 (1993) (quoting with approval *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 392-93 (1980) (Stewart, J., dissenting)).

By further contrast, there appears to be good reason why Congress tied the Virgin Islands' bond borrowing to the actual taxes assessed on real property, but not Guam's. In the federal statutes governing the Virgin Islands, Congress established the right to control and supervise that territory's real property tax system and assessment rate; Congress did not adopt similar language for Guam. *Compare* 48 U.S.C. §§ 1401-1401e (which sets out the Virgin Islands' real property tax system and creates federal oversight over the assessment rate) *with* 48 U.S.C. § 1423a (Guam's Organic Act, which simply provides that the Guam Legislature may adopt any "uniform" system of real property taxation it chooses).

Petitioner postulates that it was necessary for Congress to insert "assessed" before "valuation" in the Virgin Islands Organic Act to make sure that the Virgin Islands debt-ceiling would be tied to the "assessed valuation" of real property, not its full, appraised value because of 48 U.S.C. § 1401a, which provides that "all taxes on real property in the Virgin Islands shall be computed on the

basis of the actual value of such property." 48 U.S.C. § 1401a. (Pet. 18). There is no support in any federal law for Petitioner's conclusion. Title 48 U.S.C. § 1401a's purpose was not to define the "assessed valuation" of property as being its "full valuation." Rather, its purpose was to ensure that all real property was valued at its full value in order to correct the lack of uniformity in the Virgin Islands' real property tax scheme existing at that time. As the Third Circuit Court of Appeals explained:

> In 1936, Congress passed a bill "[t]o establish an assessed valuation real property tax in the Virgin Islands of the United States" to replace a system viewed as encouraging unproductive use of land. S. Rep. No. 74-1973, at 1 (1936). At that time, taxes were assessed at a certain amount per acre based on the land's use. Uncultivated land was taxed at a low rate, providing an incentive to keep land – even very valuable land – unproductive. *Id.* at 2 (letter of Harold L. Ickes, Secretary of the Interior, to Representative Leo Kocialkowski (May 24, 1935)). It was thought that federal legislation was needed, as the local legislature was unlikely to pass a change to a value-based tax system. S. Rep. No. 74-1973, at 6 (statement of Lawrence W. Cramer, Lieutenant Governor of St. Croix; Robert Herrick, Government Secretary, and George S. Robinson, Government Attorney).
>
> Congress took care to enter this area of law only in a limited way calculated to require a change in the overall system of property taxation to one employing uniform rates tied to actual value, but refraining from instituting permanent particular requirements.

Bluebeard's Castle, Inc. v. Government of the Virgin Islands, 321 F.3d 394, 401 (3rd Cir. 2003).

There is no historical evidence that Congress had similar concerns about the valuation of Guam real property when it enacted the Guam Organic Act, and indeed no similar language was adopted. In choosing different language to establish each territory's debt limit, Congress was granting to Guam flexibility in its borrowing not enjoyed by the Virgin Islands, just as it had granted to Guam flexibility in its real property taxation system not granted to the Virgin Islands.[8]

The Guam Supreme Court's decision also was consistent with equivalent state supreme court cases. As the Guam Supreme Court stated, when States have sought to limit their debt-ceilings to the "assessed" value of property, they have expressly stated as much. (*See* Pet. at 12a-13a). *See, e.g., Breslow v. School Dist.,* 182 A.2d 501 (Pa. 1962); *Allen v. Van Buren Township,* 184 N.E.2d 25 (Ind. 1962); *Phelps v. City of Minneapolis,* 219 N.W. 872 (Minn. 1928); *Baisden v. City of Greenville,* 111 So. 2 (Ala.

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[8] Petitioner seeks to avoid this conclusion by referring to H.R. Rep. No. 81-682, at 2, 3 (1949), as indicating Congressional intent to enact a "perfecting amendment" in modifying the expression "tax valuation" to "assessed valuation" in the Virgin Islands Organic Act. (Pet. at 18-19 n.3). However, the recommendation of a perfecting amendment to H.R. 4856 was made not by a member of Congress, but in a Department of Interior report. *See* H.R. Rep. No. 81-682, at 2, 3 (1949). And the recommended language appears to have been "aggregate tax valuation of the real and personal property" within the territory. *Id.* Not only did Congress use "assessed valuation" instead of "tax valuation," it also limited the property to "taxable real property," ignoring the Department of Interior recommendation to also include personal property. *Id. Cf.* Guam Organic Act § 11 – "aggregate tax valuation of the property in Guam." Thus, the differences between the two organic acts were not the result of some "perfecting amendment" introduced by the Department of Interior; they were the result of a self-evident choice to utilize different statutory language to achieve different ends in different territories.

1927) (per curiam); *cf. City of Chicago v. Fishburn*, 59 N.E. 791 (Ill. 1901). Congress is presumed to be aware of the ordinary meaning of terms given to them by courts in a given context. *See Albernaz v. United States*, 450 U.S. 333, 341 (1981) (because Congress is "predominately a lawyer's body," it is appropriate to assume Congress knows the law and its silence should therefore be assumed to mean that it legislated with the general rule in mind). Thus, Congress' choice to use or not use such a term as "assessed" is another factor supporting the Guam Supreme Court's well-reasoned conclusion.

Petitioner cites *Board of Education v. Passey*, 246 P.2d 1078 (Utah 1952), to argue the significance of the word "tax" before "valuation" in Section 11, as contrasted with the unqualified use of the word "value" in the Utah Constitution. The question before the Utah court, however, was not whether the lack of an adjective before "value" was significant, but whether later language in the same sentence, which required "value" to be determined by the last tax assessment, modified the earlier expression of "value." *Id.* at 1079 ("The direction [in the Utah Constitution] in the phrase following that the 'value' be 'ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness' is not a mandate that the assessed valuation upon which taxes are computed be adopted as the 'value.' What is meant by that phrase is that the last assessment is the source for finding what is the amount of the 'value.' But it does not say that the assessed valuation is the 'value.'").

In fact, the Utah court pointed to similar conclusions by other state supreme courts that also rejected the argument that "value" was modified by a later requirement in the same sentence of the relevant constitutions to

determine property values based on the last "assessment." *See id.* at 1079-80 (citing *N. W. Halsey & Co. v. City of Belle Plaine*, 104 N.W. 494 (Iowa 1905); *Hansen v. City of Hoquiam*, 163 P. 391 (Wash. 1917)). It stands to reason that if the "assessment" requirement in the same sentence of the Utah, Iowa or Washington Constitutions could not modify the earlier use of the word "value" in those *same* constitutions, it is even less conceivable that Congress would have intended that the definition of "valuation" in its federal enactment (Section 11) would be modified by the later enactment of an inferior legislative body (the Guam Legislature) defining the term "value" for local tax assessment purposes.

III. PUERTO RICO'S AND THE VIRGIN ISLANDS' HISTORY OF DEBT IS IRRELEVANT

Having failed below to introduce *any* evidence regarding *any* financial danger to the Government of Guam from the proposed borrowing, Petitioner seeks to "strengthen" his record in seeking certiorari from this Court by citing newspaper articles and similar hearsay concerning recent excessive borrowing by Puerto Rico and the Virgin Islands. (Pet. at 21-23).

Petitioner opens with a claim that "Guam is one of three U.S. territories with federal organic acts, along with Puerto Rico and the Virgin Islands." (Pet. at 21). Untrue. Guam and the Virgin Islands are the only remaining territories operating under organic acts. For over fifty years, Puerto Rico has been a commonwealth that operates under a constitution chosen by its people. *See* 48 U.S.C. § 731d (the provision of the Act permitting the creation of Puerto Rico's constitution); *see also* Keith Bea,

"Political Status of Puerto Rico: Background, Options, and Issues in the 109th Congress," (Congressional Research Service, updated June 6, 2005) (summarizing Puerto Rico's current political status).[9]

Puerto Rico does not even have a federally mandated debt-ceiling. The applicable federal laws simply authorize Puerto Rico to issue bonds as it shall determine by local legislation. 48 U.S.C. § 741 ("when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law"). Puerto Rico's debt-ceiling limitation on its ability to borrow money is established solely in its own constitution. *See* P.R. Const. art. VI, § 2 (setting Puerto Rico's debt-ceiling as a percentage of all revenue). Puerto Rico's experience with excessive borrowing under its own constitution and laws has nothing to do with the operation of the Territory of Guam under its federally dictated Organic Act.

As for the Virgin Islands, as discussed *supra*, Congress chose to use notably different language for the Virgin Islands' debt-ceiling in its Organic Act than Congress subsequently used in drafting the debt-ceiling in Guam's Organic Act. *Brewster v. Gage*, 280 U.S. 327, 337 (1930) ("The deliberate selection of language so differing from that used in the earlier acts indicates that a change of law was intended."). But even if the experience of the Virgin Islands under this different statutory language was at all instructive as to Guam, the lesson would simply be that Congress was quite capable of reigning in excessive

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[9] *Available at* http://www.openers.com/document/RL32933/2005-06-06%2000:00:00 (last visited Aug. 23, 2006).

borrowing in the Virgin Islands, threatening the appointment of a CFO and otherwise using its plenary power over the territory. (*See* Pet. at 22).[10] Indeed, Petitioner is forced to admit that following this federal intervention, the Virgin Islands "appear[s] to have succeeded in bringing its budget back into balance." (Pet. at 23).

Petitioner has not shown that Guam has a history of excessive borrowing leading to federal intervention. And Petitioner has not shown why Congress is not perfectly capable of protecting federal interests in Guam by reeling in excessive borrowing should it deem it necessary as it did in the Virgin Islands. The Guam Supreme Court has interpreted the statute in question correctly and consistent with its plain language. But even had it not, it is hardly an argument for a grant of certiorari that the Virgin Islands once had troubles when (1) there is no evidence to support the presumption that Guam is following the same path and (2) no reason to believe that Congress would not address

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[10] This is because the Virgin Islands, like Guam, is an unincorporated territory subject to plenary control by Congress. The Territories Clause provides without qualification that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., art. IV, § 3, cl. 2. Congress thus has plenary control over unincorporated territories such Guam and the Virgin Islands. *National Bank v. County of Yankton*, 101 U.S. 129, 133 (1880) ("[Congress] may make a void Act of the territorial government valid, and a valid Act void. In other words, it has full and complete legislative authority over the People of the Territories and all the departments of the territorial governments."); *Grafton v. United States*, 206 U.S. 333, 354 (1907) ("the Government of [a territory] owes its existence wholly to the United States.... The jurisdiction and authority of the United States over that territory and its inhabitants, for all legitimate purposes of government, is paramount"); *Simms v. Simms*, 175 U.S. 162, 168 (1899) (Congress has "entire dominion and sovereignty" and "full legislative power" over the territories).

that issue should it ever arise in some hypothetical and speculative future.

CONCLUSION

Congress entrusted Guam's Legislature with the power to engage in public borrowing, and it entrusted Guam's Supreme Court to sit in judgment of disputes involving issues such as public borrowing. There is no reason to believe that this trust has been abused in this case, and certainly no reason to overcome this Court's traditional reluctance to overturn the decision of a territorial court on a matter of purely local concern. It is respectfully asked that the Petition be denied.

Respectfully submitted,

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AUGUST 2006

IN THE SUPERIOR COURT OF GUAM

TERRITORY OF GUAM

ELIZABETH BARRETT-ANDERSON, Attorney General of the Territory of Guam, Plaintiff, vs. CHARLES P. CRISOSTOMO, Administrator, GUAM ECONOMIC DEVELOPMENT AUTHORITY and ANTHONY A. LEON GUERRERO, DR. SHINKYUNG KIM, CECILIA C.A. PEREZ, WILLIAM TAITAGUE, ABRAHAM ANINZO and ALBERT T. CARBULLIDO, as Members of the Board of Directors for GEDA, Defendants.	CIVIL CASE NO. CV0651-89 DECISION AND ORDER FINDINGS OF FACT CONCLUSIONS OF LAW (Filed Nov. 21, 1989)

This matter came before the Court for hearing on 7 September 1989 upon plaintiff's motion for summary judgment for declaratory relief. Assistant Attorney General Kenneth D. Orcutt appeared for plaintiff and Duncan G. McCully, Esq. appeared for defendants. The Court took the matter under advisement following the hearing. On 29 September, in deference to certain time constraints surrounding the marketing of the bonds, the Court issued an order granting summary judgment. This decision constitutes the Court's written opinion on the matter.

I.

BACKGROUND

The following facts are not disputed for the purpose of this summary judgment motion pursuant to stipulation between the parties:

On 8 March 1989, the Board of Directors of the Guam Economic Development Authority ("GEDA") issued Resolution No. 89-007 approving the issuance and sale of the Government of Guam Limited Obligation Infrastructure Improvement Bonds, 1989 Series A ("Infrastructure Bonds") and also issued Resolution No. 89-008, approving the issuance and sale of the proposed Government of Guam Water System Revenue Bonds, Series 1989 ("Water Bonds").

GEDA selected Smith, Barney, Harris, Upham & Co. as its underwriter for the Water Bonds and the firm of Ehrlich, Bober & Co. as underwriters for the Infrastructure Bonds. Each underwriter was chosen from replies to a request for proposal issued by GEDA to several potential underwriters. Both underwriters have agreed to purchase the bonds from the Government of Guam and the bonds are to be resold to individual and institutional investors.

The bonds are being sold to each underwriter through a negotiated sale or private sale, as opposed to a competitive sale or public sale. When bonds are sold at a public sale, by sealed bid, the issuer specifies the general terms of the issue, other than the bond interest rate and purchase price. The bonds then are sold to the bidder offering the most advantageous terms as to interest rate and purchase price.

In a private sale, the issuer selects an underwriter with whom the terms and conditions of the bond issue are negotiated, including the pricing of the bond issue. As part of the transaction, the underwriter will often make recommendations to the issuer concerning the structure, timing and terms of the bond issue, although these matters ultimately are negotiated by the parties.

On 3 May 1989, Attorney Andrew Gayle, counsel to the Twentieth Guam Legislature, issued a memorandum stating that the Infrastructure Bonds and the Water Bonds, if issued, would violate Section 11 of Guam's Organic Act, 42 U.S.C. §1423(a) in that they would create public indebtedness in excess of 10% of the aggregate tax valuation of the property in Guam. Gayle also opined in his 3 May 1989 memorandum that the terms "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act is assessed value of the property, not the Government of Guam's appraised value of the property. The assessed value is 35 percent of the appraised value. 11 G.C.A. §24102(f).

In a separate memorandum issued 3 May 1989, Attorney Gayle concluded that the bonds, if issued, would violate P.L. 15-15:5, which prohibits the sale of bonds at a private sale to persons having a fiduciary relationship with the Government of Guam. Specifically, Gayle concluded that the underwriters of the bonds are financial advisors to the Government of Guam and therefore subject to fiduciary duties to the Government since it is anticipated that the underwriters may give advice to GEDA as to the structure, timing and terms of the bonds.

Despite legislative counsel's opinion, on 31 May 1989 the Guam Legislature passed Bill No. 249 which approved

the issuance and sale of the Infrastructure Bonds, and on 1 June 1989 the Legislature approved the issuance and sale of the Water Bonds by passing Bill No. 166. Governor Joseph F. Ada signed Bill No. 248 into law as Public Law 10-14 on 8 June 1989 and signed Bill No. 166 into law as Public Law 20-16 on 9 June 1989.

On 6 June 1989, the GEDA Board issued Resolution No. 89-011 prohibiting the Administrator of GEDA, Defendant Charles P. Crisostomo, from permitting the issuance of both bonds. This resolution was based on Attorney Gayle's opinion as to the legality of the bonds, and, in any event, a sufficient uncertainty that had arisen to render the bonds unmarketable.

The Board resolved that GovGuam Retirement Fund's unfunded liability may be "public indebtedness" within the meaning of Section 11 of the Organic Act, and, therefore, the bonds should not issue since Guam's public indebtedness, when the Retirement Fund's unfunded liability is included, would exceed 10% of the aggregate tax valuation of property on Guam.

The Board also contended that the issuance and purchase of the bonds by the underwriters may violate Public Law 15-15, Section 5 which prohibits the sale of the bonds at a private sale to person standing in a fiduciary relationship with the Government of Guam or GEDA.

On 9 June 1989, Governor Joseph F. Ada directed defendant Crisostomo to issue the bonds as authorized by Public Law 10-14 and Public Law 20-16. On 12 June 1989, defendant Crisostomo refused to issue the bonds as a result of the controversy over the legality of the issuance of these bonds which rendered the prospective bonds unmarketable.

The process used to determine the Retirement Fund's unfunded liability is undisputed. "[T]he first step is to determine the total Accrued Actuarial Liability (AAL) for the Fund. This is accomplished by determining the AAL for each active and inactive (retired, terminated vested, disabled, survivor) member of the Fund and then adding the results to arrive at the Fund's total AAL. When current Fund assets are subtracted from the Total AAL, the Fund's, UAAL (Unfunded Accrued Actuarial Liability) results." *See* Ex. 10, letter from F. Jay Lingo, Touche Ross, to K. Orcutt dated 14 August 1989.

According to the Government of Guam Retirement Fund Actuarial Valuation as of 30 September 1987, the Government's unfunded liability is $404,764,130. The appraised value of the taxable property on Guam for 1988 is $3,246,572,495 and the assessed value is $1,136,300,373 according to the Real Property Statistical & Revenue Analysis Report from Department of Revenue and Taxation. This valuation is the most recent real property valuation required by 11 GCA 24306.

If the proposed bonds are issued and sold the amount of principal indebtedness of the Infrastructure Bonds would be approximately $26,000,000 and the Water Bonds would be approximately $47,000,000.

II.

ISSUES

The parties agree the following issues are presented to the Court:

A. Whether the unfunded liability of GovGuam's Retirement Fund constitutes "public indebtedness" for purposes of Section 11 of the Organic Act?

B. Whether "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act is the appraised value or the assessed value of the taxable property of Guam?

C. Whether P.L. 15-15:5 prohibits an underwriter of GovGuam Bonds from purchasing, at a private sale, the bonds it is underwriting?

III.

ANALYSIS

As a preliminary matter, it is clear that in an action for declaratory judgment either party may move for summary judgment, and the usual principles that govern the grant or denial of a motion for summary judgment also govern the motion for summary judgment on a claim for declaratory relief. 6 Pt.2 *Moore's Federal Practice* §56.17(19). Summary judgment is appropriate if the pleadings and supporting materials "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Guam R. Civ. P. 56(c). In Cal. *Arch. Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466 (9th Cir. 1987), the Ninth Circuit observed that the U.S. Supreme Court recently increased the utility of summary judgment. "First, [T]he [U.S. Supreme] Court has made clear that if the non-moving party will bear the burden of proof at trial as to an element essential to its case, and that party fails to make a showing sufficient to establish a genuine dispute of fact with respect to the

existence of that element, then summary judgment is appropriate. *See Celotex Corp. v. Catrett*, 477, U.S. 317, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). Second, to withstand a motion for summary judgment, the non-moving party must show that there are "genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Andersen v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). Finally, if the factual context makes the non-moving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment."

A. Whether the unfunded liability of GovGuam's Retirement Fund constitutes "public indebtedness" for purposes of Section 11 of the Organic Act?

The Attorney General argues that the Retirement Fund's unfunded liability is not a "debt" in either the colloquial or the legal sense but is an accounting term used to determine if the Fund is actuarily sound. Defendant counters that retirement benefits are deferred compensation and thus fixed indebtedness of the employer.

The Court begins its analysis with the language of the statute itself. Section 11 of the Organic Act provides in part:

§11. Scope of Legislative Authority.

> .... Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purpose of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

The Court notes that the word "indebtedness" was not defined by the drafters of the Act. The legislative history of the Act is similarly unavailing.[1]

There is a split of authority on this issue. Plaintiff cites *Columbia County v. Wisconsin Retirement Board*, 116 N.W.2d 142, 17 Wis.2d 310 (Wis. 1962) holding that unfunded liability was a contingent liability, and thus not a debt. In *Columbia County*, a taxpayer sued a state retirement fund to determine the constitutionality of a

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[1] Section 11: ... The legislature may provide for the levy of local taxes and, when necessary to anticipate taxes and revenues, the issuance of bonds and other obligations up to 10 percent of the aggregate tax valuation of the property of Guam. It may also authorize the issuance of revenue bonds. *U.S. Code Congressional Service*, Legislative History, at page 2854, Appendix, Senate Report 2109.

mandatory money-purchase retirement system that provided a life annuity to its members. The plaintiff-taxpayer had argued that the law imposed an absolute obligation on the state to pay contributions based on past service credits to be amortized over a forty year period in violation of a state law provision requiring a county to discharge a debt within twenty years from its creation. In holding that the county's obligation was not an "indebtedness" but a "contingent liability," the court relied upon the following analysis: 1) the debt amount is not absolute but variable and must be redetermined every year; 2) the obligation is not ascertainable except to make payments (by contrast a bond issue contains a principle amount that is certain where the obligor has received a definite amount of consideration); 3) the computations are comprised of book or audit figures which do not represent the total amount and will exceed the county's actual payments over time, thus the obligation is uncertain and indefinite; 4) the obligation is conditioned upon future contingencies that will affect the amount of annual payments.[2]

The defendant argues that uncertainty of the amount due should not cause the liability to be legally non-cognizable. Moreover, the purpose of a debt ceiling is to restrain the growth of public debt to a point which the Legislature deems prudent. The Retirement Fund's unfunded liability could, if unchecked, wreak havoc on the Guam economy, contrary to the salutary purpose of the Act.

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[2] The last factor on whether the debt was incurred voluntarily or not is not germain to the issue at hand and will not be discussed.

Defendant cited two California cases involving Proposition 13 that interpreted the term "indebtedness" to cover future debts of a city to meet its contractual obligation to its pension plan. In *Carman v. Alvord*, 31 Cal.3d 318, 644 P.2d 192 (Cal. 1982), a landowner brought a class action alleging that the city's *ad valorem* tax, levied to fund its pension plan, violated a newly enacted 1% ceiling on property tax set by Proposition 13.[3] The California Supreme Court held that "indebtedness" covers future obligations arising under the state's retirement system and is not limited to traditional notions of debt like bonds or secured debt amounts. This determination was based in part on the public employees' vested contractual right to earn a pension and the concomitant obligation of the employer to pay into the fund.

Similarly, in *City of Watsonville v. Merrill*, 137 Cal.App.3d 185, 186 Cal.Rprt. 857 (Cal.Ct.App. 1982), the city sued the county auditors who had levied taxes to meet the city's liability to its state retirement system but impounded the taxes following the passage of Proposition 13. Holding that the term "indebtedness" is not limited to "an amount fixed and certain," the Court of Appeals found that the retirement tax fell within the prior indebtedness exception to *Proposition 13* (*see* footnote 3) and thus the city was not limited to the stringent property tax ceiling to fund its pension plan.

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[3] "(a) The maximum amount of any *ad valorem* tax on real property shall not exceed one percent (1%) of the full cash value of such property. . . . [¶] (b) The limitation provided for in subdivision (a) shall not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective."

California Constitution, article XIII A.

The Court notes that both *Carmen* and *City of Watsonville* do not address the contingency factor – the notion that some employees may not reach retirement in order to qualify for a pension. Further, there is no way to predict how many employees will ultimately vest into the pension plan. In fact, according to the Touche Ross accountants who computed the actuarial valuation of the Retirement Fund in 1988, the unfunded liability is based upon a number of assumptions: 1) that all members will receive a 5 1/2% salary increase per year until their retirement; 2) that the Fund will generate 7% per annum income; and 3) that all plan participants will retire at age 58, the earliest age possible. *See* ex.10, *supra*. While these assumptions may be useful to actuaries in making future predictions, the Court finds them to be improper components to determine a legal debt.

The Court notes that the notion of a contingent future obligation not applying to a constitutional debt cap has been approved by this circuit. See *Southern Pacific Transportion Co. v. City of Eugene*, 627 F.2d 966 (9th Cir. 1980) (Ninth Circuit Court of Appeals affirming U.S. D.Ct. of Oregon holding that state constitutional provision prohibiting county from creating debt over $5,000 does not apply to contingent future obligations like a covenant to reimburse a company for funds expended in the construction of a road).

The law of damages may be a useful analogy. Just as the law has developed certain "rules of certainty" requiring for example, that damages not be speculative or contingent in order to recover, *see* C.T. McCormick, *Damages* 97-99 (1935), the Court finds the notion of unfunded liability too speculative on which to base a legal determination of public indebtedness. Accordingly, the Court holds

that unfunded liability of GovGuam's Retirement Fund is not public indebtedness within the meaning of Section 11 of the Organic Act.

B. Whether "aggregate tax valuation of the property in Guam" as used in Section 11 of the Organic Act is the appraised value or the assessed value of the taxable property on Guam?

It is undisputed that federal and territorial property have no tax value and are excluded from the equation. The parties also agree that appraised fair market value of Guam land in 1988 is $3,246,527,249.28.

Plaintiff argues that "aggregate tax value" is fair market value because 1) Congress could not have intended the property tax definition to apply since the Organic Act was passed in 1950, two years prior to the property tax definitions; 2) the cases cited by defendants all involve municipalities, which raise their revenue predominantly by property tax, unlike the territory of Guam, which undisputedly raises its revenue by income tax, certain sales tax and gross receipts tax – thus, there is no inherent relationship between the property values on Guam and the Government's ability to raise revenue; 3) defendant's position is contrary to sound public policy because setting the debt ceiling unnecessarily low impedes the Government from borrowing a reasonable amount of money to benefit the community.

Defendant counters that "aggregate tax value" is appraised value as codified by the Legislature at 11 GCA

§24102(f)[4] since: 1) the use of assessed value is more consistent with the purpose of a debt ceiling; 2) the use of fair market value is arbitrary and irrelevant to the levels of revenue available, thus inconsistent with the purpose of a debt ceiling; 3) plaintiff has not cited any cases using "aggregate tax value" *per se*.

The Court finds "aggregate tax value" to be ambiguous and subject to construction by the Court. While the entire phrase in dispute is not defined in the Real Property Tax law *per se*, the word "value" is, thus the Real Property Tax definition could arguably apply.

Both parties are able to cite numerous cases which illustrate that there is a clear division of authority on the issue. It is the Courts conclusion however, that none of the cases analyzes the exact phrase at issue in the case at bar: "the value of the taxable property . . . to be ascertained by the last assessment for state and county taxes . . . " *Allen v. Van Buren Township of Madison County*, 184 N.E.2d 25, 27 (Ind. 1962); *Hansen v. City of Hoquiam*, 163 P.391 (Wash. 1917) ("nor . . . shall the total indebtedness at any time exceed 5% on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes. . . ."); *Chicago v. Fishburn*, 59 N.E.

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[4] §24102. Definitions.

Unless the context otherwise requires, the following provisions shall govern the construction of this Chapter:

* * * *

(f) Value, full cash value, and cash value mean thirty-five per cent (35%) of the appraised value; appraised value means the amount at which property would be taken in payment of a just debt from a solvent debtor. [Included in the Original Government Code of Guam enacted by P.L. 1-88, 1952.]

791, 792 (Ill. 1901) ("No . . . indebtedness, in the aggregate exceeding 5% on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes. . . ."); *C.B.Nash Co. v. City of Council Bluffs*, 174 F. 182, 184 (Iowa Cir.Ct., 1909) ("no city shall be allowed to become indebted . . . to an amount in the aggregate exceeding 5% on the value of the taxable property in the city, to be ascertained by the last state and county tax lists previous to incurring such indebtedness." *Calles v. Brd. of Commissions of Hill County*, 185 P.456, 457 (Mont. 1919) ("No . . . indebtedness, in the aggregate, exceeding 5% of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness."); *Board of Education v. Passey*, 246 P.2d 1078 (Utah, 1952) ("No . . . indebtedness, exceeding 4% of the value of the taxable property therein, the value to be ascertained by the last assessment for State and County purposes . . . "). Accordingly, none of the cases is particularly persuasive in the Court's analysis of the term.

"A fundamental rule of construction of any legal document is that the main object of the interpretation is to ascertain the intent of the parties who made the instrument and to give that intent the fullest effect possible consistent with the language of the provisions and the related body of law . . . " *Armstrong v. County of San Mateo*, 146 Cal.App.3d 597, 617-8, 194 Cal.Rptr. 294 (Cal.Ct.App. 1983).

The fact that Section 11 was enacted in 1950, two years *prior* to the property tax definition, has importance in probing Congressional intent. Is it logical to infer, as defendant asks, that Congress intended "aggregate tax value" to mean "aggregate assessed tax value" at a time

when property assessments were not yet a part of Guam's laws? The Court feels such an inference would require a clear statement of Congressional intent to reference these yet unenacted laws.

Moreover, the local statute, 11 GCA §24102(f), does not specifically refer to "aggregate tax value" or even the more simple "tax value" which is the term used in the Organic Act. Further, the definition section in the local statute states only: "[u]nless the context otherwise requires, the following provisions govern the construction of this Chapter"; once again any clear reference to the Organic Act is absent. The Court notes that the local statute was enacted only two years after the Organic Act, thus the Act was presumably fresh in the Legislature's mind. Given these circumstances, it is apparent that the Guam Legislature did not intend this local statute to modify and describe the term at issue in the Organic Act.

While a standard rule of statutory construction involving the effect of legislation on post-enactment circumstances is that:

> Legislation is often written in terms which are broad enough to cover many situations which could not be anticipated at the time of enactment. [For example], radio performances have been held to come within the meaning of copyright laws, talking pictures have been held to come within the terms of statutes applying to films and telephones have been recognized as included within statutes applying to the telegraph.

2A Sutherland Stat. Const. §49.02 (4th Ed. 1984).

However, this rule is not really applicable in the case at bar because the issue is not whether one term was anticipated by Congress but which of the two terms was more logically intended by Congress at the time the Organic Act was enacted.

The Court recognizes that "the purpose of Section 11 is to place restraints upon the Governor and Legislature. Those restraints are intended to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of tax payers with those debts. Such restraints promote fiscal responsibility." *Guam Tel. Authority v. Rivera*, 416 F.Supp. 283 (1976). Nevertheless, it is also self-evident that Guam, unlike each of the municipalities cited by the parties, does not raise the majority of its revenue through property taxes. Requiring the debt ceiling to be fixed at 10% of the assessed value (which is 35% of the appraised value) would set Guam's debt ceiling at a far lower level than those municipalities that have proportionately greater property tax bases. There is no indication that Congress, in enacting the Organic Act, sought to stifle economic growth on Guam by setting the debt ceiling restrictively low. Further, the adoption of plaintiff's interpretation of aggregate tax value does not eliminate control of Legislative spending. The Court notes that the salutary purpose of a debt ceiling will still be served by requiring that the debt ceiling fix at 10% of the appraised value of the taxable property on Guam.

In that neither the parties nor the Court have discovered legal authority specifically interpreting "aggregate tax value" as used in Section 11 of the Organic Act, the Court relies on the fact that Section 11 was enacted prior to the property tax law, that Guam earns its revenue in a

different manner than the municipalities in cases GEDA has cited and that the local statute does not clearly refer to the Organic Act in holding that "aggregate tax value" most logically refers to the appraised value of the taxable property on Guam.

C. Whether P.L. 15-15:5 prohibits an underwriter of GovGuam Bonds from purchasing, at a private sale, the bonds it is underwriting?

Plaintiff argues that no fiduciary relationship exists between the underwriters and GovGuam or GEDA because the bond issues are being sold through a negotiated sale, therefore the bond purchase will not violate P.L. 15-15:5. As stated, in a private sale the terms, conditions and price are negotiated. Further, Rule G-23 of the Municipal Securities Rulemaking Board (MSRB) states that no financial advisory relationship exists when a municipal securities dealer acts as an underwriter rendering advice to an issuer. Thus neither the firm of Ehrlich, Bober & Co. nor Smith Barney, Harris, Upham & Co. would be fiduciaries offering financial advice to GovGuam or GEDA.

Defendant counters by incorporating Attorney Gayle's opinion of 3 May 1989 which cites footnote 8 of *Abell v. Potomac Insurance Co.*, 858 F. 2d 1104 (5th Cir. 1988). *Abell* involved allegations of securities fraud and civil racketeering by a class of bond holders against a public housing developer, its bond counsel and a Bermuda corporation. In footnote 8 the Court recognized that in certain situation issuers and bond underwriters might be "sellers" within the meaning of the Securities Act, 15 U.S.C. §77 *et. seq.* by analogizing their relationship to that of automobile manufacturers and car dealers – in such relationships

manufacturers often conduct intensive marketing campaigns to promote a product that benefits the dealers.

P.L. 15-15:5 provides as follows:

> (a) Notwithstanding any provision of law to the contrary whenever an Authority of the government sells bonds at a private sale, no person standing in a fiduciary relationship with the Authority shall purchase any of the bonds.
>
> (b) As used in this Section, "person" means a natural person, corporation, partnership, trust or the employer of a natural person.
>
> (c) If the provision of this Section are violated then the sale of the bonds to the violating person shall be deemed null and void ab initio.

Section 15:15(5) is part of an amendment to P.L. 13-57 which created in 1975 the Guam Airport Authority ["GAA"] and authorized the issuance of special and general revenue bonds by public sale to finance capital projects. Four years later P.L.15:15 was enacted to facilitate the sale of both types of bonds and in particular to permit the sale of general revenue bonds by private sale.

The Committee Report's findings incorporated *inter alia*, a report prepared by First Southwest Company dated March, 1979 entitled "The Advantage of Marketing Flexibility When Selling Tax Exempt Bonds". First Southwest is an investment banking firm located in Dallas, Texas that was hired as a "financial consultant" to GAA. In its advisory capacity the firm reviewed the statutes governing GAA and recommended amending legislation to permit the

private sale of bonds. Their recommendations culminated in P.L. 15-15(1-4).

It is apparent from the Committee Report that Senator San Agustin recommended a provision "prohibiting the underwriter from purchasing any of the bonds." Senator San Agustin's written comments entitled "Services Available in Return for Non Competitive Bid Opportunities" illustrate that he was concerned about a consulting firm's potential conflict of interest in its role as financial advisor and bond purchaser.

As Senator San Agustin explained:

> "[T]he seller . . . wants the lowest interest cost it can secure. The buyer on the other hand, wants to purchase the bond[s] at . . . a profit minimizing the market risk . . . and . . . facilitate the sale. This difference should at all times be conducted a[t] an arms length transaction with[ ] a willing buyer and a willing seller."

Senator Agustin's concerns were subsequently codified as P.L. 15-15:5.

It is apparent to this Court that there are differences in the role of First Southwest in 1979 and the prospective role of the two underwriters in the case at bar. First, no evidence has been presented that the underwriters have reviewed Guam statutes and recommended additional legislation to facilitate the issuance of the subject bonds. Second, no evidence has been presented that the underwriters have or will serve as "financial advisors" outside their role in making "recommendations to the issuer concerning the structure, timing and terms of the bond issue." *See* Stipulated Facts Re: Summary Judgment. In fact, plaintiff's assertion that no entity has played the role

of financial advisor to GEDA in the instant bond transaction stands uncontroverted.

Moreover, Rule G-23(b) of the MSRB expressly provides that no financial advisory relationship arises when a municipal securities dealer renders advice to an issuer regarding the structure, timing and terms of a new bond issue. Created by Congress in 1975 as part of a comprehensive set of amendments known as the Securities Acts Amendments of 1975, the MSRB is a self-regulatory organization whose primary duty is to formulate rules regulating the activities of municipal securities dealers. 15 U.S.C. §78-0-4. The Board is composed of individuals from every walk of municipal securities life: securities firms, bank municipal securities dealers, and investors in and issuers of municipal securities. The salutary purpose of the Board rules are

> designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with the bank regulation agencies and others engaged in . . . facilitating transactions in municipal securities, to remove impediments and to perfect the mechanism of a free and open market in municipal securities, and in general to protect investors and the public interest. *See* S. Rep. No. 75, 94th Cong., 1st Sess. (1975), *reprinted in* 1975 U.S. Code Cong. S. Admin. News 1979, 224-25.

While there are no cases directly on point, the Court finds Rule G-23(b) highly persuasive in resolving this issue. The MSRB was apparently created by Congress to formulate regulatory rules in the municipal securities area in order to promote the public interest. Rule G-23(b)

clearly answers the question posed by the Government in this case. In light of this rule, and the different roles played by First Southwest in 1979 and the underwriters herein, the Court holds that P.L. 15-15:5 is not implicated by the underwriters' purchasing at a private sale the Infrastructure and Water Bonds issued in the case at bar.

The above constitutes findings of fact and conclusions of law pursuant to Rule 52 of the Superior Court Rules of Court.

Applying the above findings and conclusions to the facts stipulated to by counsel, the Court finds as expressed in its Order of 29 September 1989, that the issuance and sale of the Infrastructure Bonds and Water Bonds are not in violation of Section 11 of the Organic Act.

Plaintiff's motion for summary judgment is granted.

SO ORDERED this 21st day of November, 1989.

/s/ Janet Healy Weeks
JANET HEALY WEEKS,
Judge
Superior Court of Guam

(3)

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SUPREME COURT

No. 06-116

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM
Petitioner,

v.

FELIX P. CAMACHO, GOVERNOR OF GUAM
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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This case presents an important question of federal law concerning a congressionally established limit on the basic powers of a territorial government. The Guam Supreme Court decided the question incorrectly, ignoring the wording and undisputed purposes of the Guam Organic Act's debt-limitation proviso. The result is to give the Guam government more authority to incur indebtedness than Congress intended and thus to permit the Guam government to imperil the territory's fiscal health.

The Court of Appeals recognized the question's importance by granting certiorari. This Court should do so too. Absent intervention by this Court, this issue affecting the governance of more than 150,000 U.S. citizens will go unreviewed by any Article III court.

I. THIS COURT HAS JURISDICTION

Respondent rightly acknowledges that this dispute presents a case or controversy under Article III. Br. in Opp. 3 n.1. But he contends that the Court nonetheless lacks jurisdiction because the petition was untimely. That contention is meritless.

As the petition explains, this Court has recognized that although the 90-day period for filing certiorari petitions is jurisdictional, the period only begins to run once there is a judgment below in the relevant sense. Pet. 2-3. The Court has repeatedly held that when a litigant or court below takes an action that "raise[s] the question whether the court will modify the judgment and alter the parties' rights," *Hibbs* v. *Winn*, 542 U.S. 88, 98 (2004), there simply "is no 'judgment' to be reviewed," *Missouri* v. *Jenkins*, 495 U.S. 33, 46 (1990), within the meaning of the statute setting the 90-day time limit. That is precisely the case here, where the Court of Appeals' proper grant of certiorari served to suspend the effect of the Guam Supreme Court's decision and leave the parties' rights subject to alteration until the Court of Appeals ruled that a statute enacted in the interim had deprived it of jurisdiction. It was only once the Court of Ap-

peals had held that it lacked jurisdiction that there was a final judgment below to be reviewed by this Court.

Respondent points out that this Court has never applied the principle described in cases such as *Hibbs* and *Jenkins* to the precise circumstances presented in this case. Br. in Opp. 2. That is hardly surprising, given how unusual those circumstances are: a decision by a territorial supreme court properly accepted for certiorari review by a Court of Appeals, only to have Congress shift certiorari jurisdiction to this Court after the case had been fully briefed and argued in the Court of Appeals. Respondent suggests that petitioner should have filed a certiorari petition with this Court while the Court of Appeals was still considering the case, Br. in Opp. 1, despite the fact that the Court of Appeals had already granted certiorari and had yet to decide whether the intervening statute deprived it of jurisdiction. The jurisdiction-shifting statute was passed much more than 90 days after the Guam Supreme Court's decision, and respondent would no doubt have opposed such a petition as untimely even if petitioner had filed it. In any event, a rule requiring such a filing would only have encouraged wasting this Court's judicial resources by requiring it to consider a premature petition and possibly would have delayed the Court of Appeals' resolution of the question whether the jurisdiction-shifting statute applied to this pending appeal. Respondent also suggests that petitioner should have filed a motion with the Guam Supreme Court seeking to have it retain jurisdiction of the case, *id.* at 2, but respondent fails to explain how that would have been proper once the Court of Appeals had assumed jurisdiction over the appeal.

In short, respondent offers no principled basis for denying the applicability of the rule of *Hibbs* and *Jenkins* to the admittedly idiosyncratic circumstances of this petition. Petitioner has at every turn sought review of the Guam Supreme Court's decision in a timely manner, first by petitioning the Court of Appeals successfully and then by filing this petition promptly once it was clear that jurisdiction lay in this Court

rather than the Court of Appeals. Neither 28 U.S.C. § 2101(c) nor common sense requires anything more.

II. This Court Need Not Defer To A Territorial Court About The Question Presented, Which Is One Of Federal Law

Respondent argues that this case presents a question of purely local concern to the territory of Guam, and that this Court should thus defer to the Guam Supreme Court's interpretation of Section 11 of the territory's Organic Act. Br. in Opp. 9-13. The question at issue, however, is one of federal, not territorial, law. Both this Court and the Court of Appeals during its tenure as the Article III court reviewing the Guam Supreme Court's rulings, have made clear that Article III courts owe deference to territorial courts' interpretations of local law, not federal law. And while resolution of the question presented may have only indirect significance outside Guam, that hardly demonstrates that the question is beneath this Court's attention. The issues this Court accepts for review from the territorial courts are often of limited significance outside the territory from which the issue arises. The question here involves the meaning of an Act of Congress that defines one of the basic powers of a government under which more than 150,000 U.S. citizens live. It is thus a question of sufficient public importance to warrant this Court's scrutiny.

Respondent cites several cases to support his claim that this Court has consistently granted deference to the decisions of territorial courts addressing questions of local concern. Br. in Opp. 10. Those cases, unlike this one, however, involved a territorial court's interpretation of territorial, not federal, law. *See Waialua Agric. Co.* v. *Christian*, 305 U.S. 91, 109 (1938) (territorial court's interpretation of Hawaiian law concerning the validity of actions taken by an incompetent to convey or assign property rights); *Matos* v. *Hermanos*, 300 U.S. 429, 432 (1937) (territorial supreme court's interpretation of territorial law mandating whether a sales contract was voidable rather than void); *Santa Fe Cent. Ry. Co.* v. *Friday*, 232 U.S. 694, 700 (1914) (territorial court's

interpretation of territorial statutes defining jurisdiction of local courts). This Court has expressly recognized the distinction between decisions of territorial courts interpreting local law and decisions interpreting federal law, explaining that "great deference must be paid to local decisions ... *[w]here the Constitution or statutes of the United States [are] not involved.*" *De Castro* v. *Board of Comm'rs*, 322 U.S. 451, 457-458 (1944) (emphasis added). When, as here, a federal question is presented, no such deference is called for.

Contrary to respondent's contention, Br. in Opp. 11, the Courts of Appeals, when endowed with certiorari jurisdiction over decisions of territorial supreme courts, have followed the same policy of deference to interpretations of local law, but not of federal law. The Court of Appeals for the Ninth Circuit, for example, in reviewing decisions of the Guam Supreme Court, gave deference to rulings addressing Guam law, but not to ones addressing federal law. The latter were reviewed *de novo*. *See, e.g.*, *Gutierrez* v. *Pangelinan*, 276 F.3d 539, 546 (9th Cir. 2002).[1] This Court owes the Guam Supreme Court's reading of the federal Organic Act no special consideration.

Respondent argues that the meaning of Section 11 of the Guam Organic Act does not merit this Court's attention because it is an issue of concern only to Guam. As explained in the petition, a decision by this Court undoing the Guam Supreme Court's erroneously permissive interpretation of Guam's federal debt-limitation provision might well have indirect effects on the fiscal policies adopted in other territo-

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[1] Consistent with that approach, the one First Circuit decision cited by respondent as supporting the principle of deference to territorial courts' interpretations, *Campose* v. *Central Cambalache, Inc.*, 157 F.2d 43 (1st Cir. 1946), involved issues of Puerto Rican, not federal, law. *See id.* at 44.

Pernell v. *Southall Realty*, 416 U.S. 363 (1974), upon which respondent also relies, Br. in Opp. 11-12, addressed the deference due particularly to the courts of the District of Columbia, and it has never been cited as supporting deference to the decisions of the courts of non-incorporated territories such as Guam.

ries. Pet. 21-23.[2] But while the question presented has direct significance only for Guam, that is no reason for this Court to deem it unworthy of review. On the contrary, the decisions arising from territories that this Court has chosen to review have often concerned issues that were of direct moment only to the territory in question. *See, e.g., Territory of Alaska* v. *American Can Co.*, 358 U.S. 224, 225 (1959) (petition "granted in view of the fiscal importance of the question to [the territory of] Alaska"); *Puerto Rico* v. *Rubert Hermanos, Inc.*, 309 U.S. 543, 544 (1940) ("The question here in controversy is a matter of great importance to Puerto Rico and involves the power of its legislature to enforce Congressional policies affecting the Island. We therefore brought the case here on a writ of certiorari ...."). Indeed, respondent cites several decisions by this Court that, by respondent's own account, addressed issues of purely local concern to territorial governments and their inhabitants. Br. in Opp. 10. Yet this Court chose to review those issues nonetheless. And it did so even though, as noted above, *supra* pp. 3-4, the issues were ones of local, rather than federal, law.[3] This Court chose to review those territory-specific questions no doubt because the questions presented were ones of great significance to the governments and peoples of the territories involved. The same is certainly true here, where the issue concerns a fundamental, congressionally

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[2] As respondent points out, Br. in Opp. 23, Puerto Rico's debt ceiling is contained in its constitution rather than in a federal organic act. But that does not weaken the point that Puerto Rico, like Guam and the Virgin Islands, has experienced recurrent fiscal crises and that a decision by this Court interpreting the Guam debt-limitation proviso in light of the goals of fiscal restraint and governmental accountability that underlie all three territories' debt caps might well have a beneficial effect on both interpretations of and fiscal policy carried out under the debt caps in Guam's sister territories.

[3] Once one adds in decisions by this Court addressing questions of federal law of peculiar interest to particular territories, the list of decisions by territorial courts addressing issues of direct significance only to particular territories that this Court has accepted for review grows even longer. *See, e.g., Territory of Guam* v. *Olsen*, 431 U.S. 195 (1977).

mandated limitation on one of the Guam territorial government's core powers.

III. The Guam Supreme Court's Decision Ignores The Plain Terms And Purposes Of The Organic Act's Debt-Limitation Provision

As the petition demonstrates, the Guam Supreme Court plainly misinterpreted the debt-limitation provision in Section 11 of the Organic Act. The provision's wording and central purposes show that the phrase "aggregate tax valuation" refers to the assessed value of property in Guam used for imposing property taxes rather than the full market value. Respondent repeats the arguments offered by the Guam Supreme Court for the contrary view, but offers no remedies for the flaws from which those arguments suffer.

If Congress had intended to set the debt ceiling with reference to the full value of all property on Guam, it could simply have said "aggregate valuation." Instead, it included the qualifier "tax," with the evident purpose of tying the level of permissible indebtedness to the valuation of property used for purposes of taxation, that is, the assessed value. Respondent, like the Guam Supreme Court, offers no plausible response to this fundamental point.

Board of Education v. *Passey*, 246 P.2d 1078 (Utah 1952), and the decisions upon which it relied, made this very point in interpreting state constitutional debt caps that lacked a qualifying term such as "tax" or "assessed." Pet 15-16. The absence of a qualifier, these decisions reasoned, showed that full, not assessed, value was intended as the measure of the cap. Respondent suggests that *Passey* and the other decisions turned on another phrase in the debt-limitation provisions at issue, Br. in Opp. 21-22, but even a cursory examination shows respondent mischaracterizes those decisions. The question in *Passey* was whether a state statute authorizing school districts to incur indebtedness up to four percent "of one hundred percent of the reasonable fair cash value of the taxable property therein," 246 P.2d at 1079, was consistent with a constitutional limitation of indebtedness to four percent of "the value of the taxable prop-

erty therein, *the value therein to be ascertained by the last assessment for State and County purposes, previous to the incurring of the indebtedness*," *id.* at 1078 (emphasis added), where the state legislature had set the assessment rate at 40%. Respondent stresses the italicized clause in the constitutional debt cap. But it was precisely the reference to assessment in that clause that the defendant pointed to in supporting his argument that the constitutional cap was defined in terms of the assessed value of property, *i.e.*, 40%, not 100%. Despite that reference to assessment, the Utah Supreme Court emphasized that the constitutional limit must mean full, not assessed, value exactly because the "word 'value' is not limited or qualified by any adjectives." *Id.* at 1079. The similar decisions from Washington and Iowa followed the same path of reasoning. Thus, the presence of the clause emphasized by respondent only drives home how decisive these courts took the absence of a qualifier before "value" or "valuation" to be. It is the presence of such a qualifier here, "tax," that respondent, like the Guam Supreme Court, is unable to explain.

Echoing the Guam Supreme Court, respondent suggests that the word "tax" serves to limit the property whose valuation determines the debt ceiling to taxable property. Br. in Opp. 15. If Congress had intended the word "tax" (or one of its variants) to specify the type of property included in the debt calculation, though, it would have placed the modifier "taxable" before the word "property," not "tax" before "valuation." *See* Pet. 16. The Congress that enacted the Guam Organic Act was certainly familiar with designating the universe of property used to calculate a debt cap by placing "taxable" in front of "property." In crafting the debt-limitation provision in the Virgin Islands Organic Act only months earlier, Congress limited that territory's indebtedness based upon the "aggregate assessed valuation of the *taxable real property*." 48 U.S.C. § 1403 (emphasis added). Thus, if Congress had wanted the word "tax" in Guam's debt-limitation provision to serve the purpose of specifying the type of property encompassed in the debt limitation calculation, Congress could have elected to use a qualifier to

modify the term "property" instead of the term "valuation." Instead, Congress included the qualifier "tax" before "valuation," thereby tying the level of permissible indebtedness to the valuation of property used for the purpose of taxation, *i.e.*, the assessed value.

Respondent contends that petitioner's reading improperly derives the meaning of the phrase "aggregate tax valuation" in the federal Organic Act from the definition given the term "value" in the Guam statute that sets the assessment rate at 35% by defining "value" to mean 35% of market value. Br. in Opp. 13-14, 21-22; *see* 11 Guam Code Ann. § 24102(f). Respondent attributes to petitioner an argument he does not make. The Guam legislature clearly does not have the authority to define terms contained in the federal Organic Act, and petitioner has not claimed that the meaning of the phrase "aggregate tax valuation" turns upon the definition of the word "value" adopted by the Guam legislature. The Guam legislature need not have used the word "value" or any of its variants in setting the assessment rate for property on Guam, and petitioner's argument would be wholly unaffected if it had not. It is the text and purposes of the Organic Act that make clear that the phrase "aggregate tax valuation" means assessed value because of the relationship between assessed value and taxing capacity. The presence of the word "value" in the Guam statute setting the particular rate of assessment is wholly beside the point.

The link between the Guam Organic Act's debt-limitation provision and valuation of property for purposes of taxation is drawn not only by the presence of the word "tax" immediately before the word "valuation," but also by the introductory phrase allowing borrowing only "when necessary to anticipate taxes and revenues." 48 U.S.C. § 1423a. That phrase emphasizes that borrowing by the Guam Legislature is permissible only when the Legislature determines that the debt incurred can be paid off from existing or reasonably anticipatable sources of tax revenue.

Respondent's interpretation leaves the territorial Legislature free to engage in much greater borrowing—with the

present assessment rate of 35%, nearly three times as much borrowing—as would the interpretation urged by petitioner. Respondent notes that the Guam Legislature could raise the borrowing limit without changing the actual property tax burden by increasing the assessment rate but lowering the tax rate. Br. in Opp. 16-17. While that is mathematically correct, it ignores the political psychology that leads jurisdictions all around the United States to keep assessment rates lower than full appraised value. That widespread practice, no doubt familiar to members of Congress, reflects voters' preference for assessment rates of less than 100%, perhaps because voters are both skeptical of the willingness of legislatures to lower tax rates as property values increase and sensitive to the risk that rising property values may lead to unrealized gains yet current-year tax burdens.

Respondent, like the Guam Supreme Court, stresses the difference in the wording of the Virgin Islands and Guam Organic Acts. Br. in Opp. 17-20. But, as the petition explains, the use of the word "assessed" in the Virgin Islands statute was necessary because the Virgin Islands statute already included a requirement that "all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property," 48 U.S.C. § 1401a. Pet. 17-19. Because of this pre-existing federal requirement, if the debt-limitation provision added to the Virgin Islands Act in 1949 had defined the limitation with reference to "aggregate tax valuation," that might well have been understood to mean actual value. Thus, in the Virgin Islands Act, it was necessary for Congress to insert the word "assessed" before "valuation" in the debt-limitation proviso in order to make clear that the debt ceiling was tied to the assessed value of property, not its full, appraised value.

Respondent observes that Congress imposed the requirement of full-value taxation in the Virgin Islands Act in order to remove certain inequalities in taxation that had existed in the Virgin Islands before that. Petitioner noted this very point in the petition. *See* Pet. 18 n.2. The reason for the requirement is not disputed, nor is it relevant. What

matters for purposes of understanding the wording of the Virgin Islands' debt-limitation provision, which was added to the Virgin Islands Organic Act in 1949, is that the full-valuation requirement had been put in place 13 years earlier and thus was an existing element of the Organic Act that a new provision, such as the debt cap, had to take into account. It was because of the full-valuation requirement's presence that the word "assessed" was needed before "valuation" in the Virgin Islands Act. There was no similar need in the Guam Organic Act, the debt-limitation proviso of which was enacted as part of the original Organic Act in 1950.

The purpose of Guam's federal debt-limitation provision is "to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of taxpayers with those debts." *Guam Tel. Auth.* v. *Rivera*, 416 F. Supp. 283, 287 (D. Guam 1976). The Guam Supreme Court's decision undermines that fundamental congressional goal. This case thus presents an important opportunity for this Court to ensure that the limitations Congress has imposed on a territorial government are properly understood and scrupulously observed. Doing so will promote both the fiscal soundness of Guam's government and the accountability of that government to the U.S. citizens it serves.

CONCLUSION

For the reasons given above as well as those given in the petition, the petition should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN,
ATTORNEY GENERAL OF GUAM,
Petitioner,

v.

FELIX P. CAMACHO,
GOVERNOR OF GUAM,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GUAM

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 19, 2006
CERTIORARI GRANTED SEPTEMBER 26, 2006

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IN THE SUPREME COURT OF GUAM

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

DOCKET SHEET FOR CRQ2003-01

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Doc No.	File Date	Received Date	Document Title
1		7/1/2003 12:11 PM	Certified Question fileed [sic] on 7/1/2003 12:11 PM
2		7/1/2003 12:42 PM	Payment of Docket Fee is filed on 7/1/2003 12:11 PM
3	7/1/2003 4:25 PM		Order: request for Declaratory Judgment is accepted, signed by Chief Justice F. Philip Carbullido, filed on 07/01/2003 04:25 PM
4	7/1/2003 4:30 PM		Order appointing Justice Benjamin J.F. Cruz, and Richard H. Benson as Justice Pro Temp, signed by Chief Justice F. Philip Carbullido, filed on 07/01/2003 04:30 PM
5	7/1/2003 4:31 PM		Notice of hearing filed on 07/01/2003 04:31 PM
6	7/2/2003 7:52 AM		Service Route Slip filed on 07/02/2003 07:52 AM

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7	7/2/2003 7:52 AM		Declaration of Service on Atty. Moylan, received by Michele Duenas, filed on 7/2/2003 7:52 AM
8	7/2/2003 7:52 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 7/2/2003 7:52 AM
9	7/2/2003 7:52 AM		Declaration of Service on Senator Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
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14	7/2/2003 7:52 AM		Declaration of Service on Speaker Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
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18	7/2/2003 7:52 AM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 7/2/2003 7:52 AM
19	7/2/2003 7:52 AM		Declaration of Service on Speaker Pangelinan, received by Daniel Ybarra, filed on 7/2/2003 7:52 AM
20	7/2/2003 7:52 AM		Declaration of Service on Atty. Teriaje, filed on 7/2/2003 7:52 AM
21	7/2/2003 11:06 AM		Order: all briefs filed by 3:00 pm on 7/7/03, opposition filed by 5:00 pm on 7/8/03, OA on 7/9/03 at 10:00 a.m., signed by Chief Justice F. Philip Carbullido, filed on 7/2/2003 11:06 AM
22	7/2/2003 1:39 PM		Service Route Slip filed on 07/02/2003 01:39 PM
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25	7/2/2003 2:00 PM	7/2/2003 2:00 PM	MINUTES OF STATUS HEARING HELD ON JULY 2, 2003 AT 10:00 A.M. BEFORE CHIEF JUSTICE F. PHILIP CARBULLIDO, JUSTICE PRO TEMP BENJAMIN J.F. CRUZ AND JUSTICE PRO TEMP RICHARD BENSON. BRIEFING SCHEDULE AND ISSUES TO BE BRIEFED ISSUED. ORAL ARGUMENTS SCHEDULED FOR JULY 9, 2003 AT 10:00 A.M.
26	7/3/2003 3:18 PM		REQUEST FOR RECUSAL filed on 07/03/2003 03:18 PM
27	7/3/2003 4:10 PM		PROOF OF SERVICE filed on 07/03/2003 04:10 PM
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31	7/7/2003 2:46 PM		Respondent Government of Guam's Opening Brief filed on 07/07/2003 02:46 PM
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33	7/7/2003 2:58 PM		Declaration of Artemio B. Ilagan in support of Governor Felix Camacho's request for declaratory judgment, filed on 07/07/2003 02:58 PM
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37	7/7/2003 4:11 PM		Brief of Amicus Curiae filed on 07/07/2003 04:11 PM
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41	7/8/2003 4:42 PM		Opposition to Governor Felix P. Camacho filed on 07/08/2003 04:42 PM
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52	7/23/2003 1:13 PM		Opinion: issuance of bonds authorized under P.L. 27-19 would not violate section 11 of the Organic Act signed by Chief Justice F. Philip Carbullido, Justice Pro Tempore Richard H. Benson, Justice Pro Tempore Benjamin J.F. Cruz, filed on 07/23/2003 01:13 PM
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57		8/15/2003 4:51 PM	Response to PETITION FOR CERTIORARI TO NINTH CIRCUIT received on 08/15/2003 04:51 PM

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58		10/27/2003 10:30 AM	Order received from the Ninth Circuit, on 10/27/2003 10:30 AM
59		11/4/2003 10:00 AM	Motion to Expedite received on 11/04/2003 10:00 AM
60		11/4/2003 10:00 AM	Declaration of Arthur B. Clark in support of Motion to Expedite, received on 11/04/2003 10:00 AM
61		11/4/2003 10:00 AM	Declaration of Felix P. Camacho, received on 11/04/2003 10:00 AM
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67	11/18/2003 3:05 PM		Service Route Slip filed on 11/18/2003 3:05 PM
68	11/18/2003 3:05 PM		Declaration of Service on Atty. Moylan, received by Flora Salas, filed on 11/18/2003 3:05 PM
69	11/18/2003 3:05 PM		Declaration of Service on Atty. Clark, received by Alana Meno, filed on 11/18/2003 03:05 PM

Doc No.	File Date	Received Date	Document Title
70		12/5/2003 4:30 PM	PETITION FOR CERTIORARI TO NINTH CIRCUIT received on 12/05/2003 04:30 PM
71		12/29/2003 10:35 PM	Opposition to Motion for enlargement of time to file petitioner's opening brief, received on 12/29/2003 10:35 PM
72		02/09/2004 10 AM	RESPONDENT GOVERNOR OF GUAM'S Opposition Brief to the Ninth Circuit received on 02/09/2004 10:00 AM
73		3/3/2004 10:00 AM	Memo received from the Ninth Circuit on 03/03/2004 10:00 AM
74		2/24/2006 11:00 AM	Order received on 2/24/2006 11:00 AM from the 9th Circuit Court of Appeals. Case is hereby resubmitted effective February 1, 2006. 9th circuit case no. 03-72836
75		04/10/2006 10:30 AM	JUDGMENT received from the Ninth Circuit, case is DISMISSED FOR LACK OF JURISDICTION, filed 3/28/06, received on 04/10/2006 10:30 AM
76		07/31/2006 02:00 PM	Memo Or Letter Of Correspondence received on 07/31/2006 02:00 PM Frame the United States Supreme Court. The petition for writ of certiorari was filed on 7/19/06 and placed on the docket on 7/25/06 as No. 06-0116.

Doc No.	File Date	Received Date	Document Title
77	8/7/2006 3:51 PM		PETITION FOR CERTIORARI TO US SUPREME COURT filed on 8/7/2006 3:51 PM
78		10/3/2006 3:10 PM	Notice from U.S. Supreme Court, received on 10/03/2006 03:10 PM

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUGLAS B. MOYLAN,
Petitioner,
v.
FELIX P. CAMACHO,
Respondent.

GENERAL DOCKET
FOR CASE NO. 03-72836

[Docket as of June 7, 2006]

8/1/03	FILED PETITION FOR WRIT OF CERTIORARI FROM SUPREME COURT OF GUAM, DOCKETED CAUSE AND ENTERDED APPEARANCES OF COUNSEL. NOTIFIED RESPONDENT OF FILING. (MOATT) [03-72836] (wp)
8/15/03	Filed Respondent Felix P. Camacho's response to petition for writ of certorari [sic]; served on 8/15/03. (MOATT) [03-72836] (af)
10/23/03	Filed Order (Kim M. WARDLAW, Marsha S. BERZON, Richard R. CLIFTON,) The petition for a writ of certiorari to review a final decision of the Supreme Ct of Guam is GRANTED. The Clk of the Supreme of Guam shall file the COR with the Clk of this ct by 11/17/03. (cite) Petr's opening brf on review is due 12/29/03; resp's ans brf is due 1/28/04; and the petr's optional reply brf is due 14 days after svc of the ans brf. Briefing shall comply with FRAP 32. [03-72836] (af)

10/23/03	Sent a copy of 10/23/03 order of the ct to the Supreme Ct of Guam @ 120 West O'Brien Drive, Ste 300, Hagatna, GU 96910. [03-72836] (af)
11/3/03	Received Resp Felix P. Camacho's mtn to expedite; no POS. (Work in process; PROMO/tah) [03-72836] (af)
11/14/03	Filed order (Deputy Clerk: tah) the court has received the respondent's motion to expedite and petitioner's response. The motion to expedite is granted is part. The briefing schedule established in the 10/23/03 order shall remain in effect. This case shall be placed on the next available calendar after briefing is completed. [4888676-1] [03-72836] (dv)
11/14/03	Received Resp Felix P. Camacho's reply to petr's response to resp's mtn to expedite; declaration of Arthur B. Clark; served on 11/17/03. (FYI/PROMO; casefile/nan per promo) [03-72836] (af)
11/17/03	Filed certificate of record on appeal RT filed in DC 11/14/03. (CASEFILES) [03-72836] (af)
12/24/03	14 day oral extension by phone of time to file Petitioner brief. [03-72836] appellants' brief due 1/12/04; appellees' brief due 2/11/04; the optional reply brief is due 14 days from service of the answering brief. (cg)
12/24/03	Received Respondent Felix P. Camacho opposition to mtn for enlargement of time to file petr's opening brf; served on 12/26/03. (No action necessary per PROMO/tah) [03-72836] (af)
1/14/04	Filed Original and 15 copies Petitioner Douglas B. Moylan opening brief (Informal: no) 48 pages and five excerpts of record in 1 volume; served on 1/12/04. [03-72836] (af)
2/9/04	Calendar check performed [03-72836] (aw)

2/9/04	Filed Original and 15 copies appellee Felix P. Camacho's 31 pages brief, -zero- Exc. vol; served on 2/7/04. [03-72836] (af)
2/11/04	Calendar materials being prepared. [03-72836] [03-72836] (aw)
2/19/04	CALENDARED: Hawaii May 6, 2004 9:00 AM Courtroom Sixth Floor [03-72836] (rei)
3/1/04	Filed Original and 15 copies Douglas B. Moylan reply brief, (Informal: no) 18 pages; served on 2/23/04. (PANEL) [03-72836] (af)
5/6/04	ARGUED AND SUBMITTED TO Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON [03-72836] (pi)
12/8/04	Filed Felix P. Camacho RENEWED mtn to expedite; served on 12/8/04. (faxed to PANEL) [03-72836] (af)
12/15/04	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) In response to the renewed mtn to expedite, filed on 12/8/04, the parties are informed that no opinion in this cs until the cs of Santos v. People of Guam, Cs No. 03-70472, is decided, clarifying our continued certiorari jurisdiction over decisions from the Supreme Ct of Guam. [03-72836] (af)
12/22/04	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) Submission of this case is withdrawn and deferred pending a ruling on Santos v. People of Guam, No. 03-70472. [03-72836] (af)
2/1/06	Filed Order (Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON,) This cs is hereby resubmitted effective 2/1/06. [03-72836] (af)

2/1/06	Case resubmitted on this date to Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON. (See previous deferral of submission.) Order filed: 2/1/06. [03-72836] (af)
3/6/06	Order filed, on 10/30/04, Congress amended 48 U.S.C. 1424-2 and w/d the 9th Circuit's jurisdiction to review appeals from Guam courts. This ct recently held in Santos v. Guam, (cite), that all appeals from Guam courts currently pending in the 9th Cir., regardless of the date filed, must be dismissed for lack jurisdiction. This appeal, therefore, is DISMISSED. (Terminated on the Merits after Oral Hearing; Dismissed; Written, Unsigned, Unpublished. Jerome FARRIS, John T. NOONAN, Johnnie B. RAWLINSON) [03-72836] (af)
3/28/06	MANDATE ISSUED [03-72836] (ea)
6/6/06	Received letter from the Supreme Court dated 5/31/06 re: The application for an ext. of time w/in which to file a petition for a writ of certiorari.....extended the time to and including 7/19/06. (FYI/PNL) [03-72836] (af)

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: FILED
SUPREME COURT OF GUAM
JUL 1 12:11PM '03]

REQUEST FOR DECLARATORY JUDGMENT (7 G.C.A. § 4104)

COMES NOW, Felix P. Camacho, Governor of Guam, pursuant to 7 Guam Code Annotated ("G.C.A.") § 4104 and Rules 26 and 27 of the Guam Rules of Appellate Procedure and requests that the Court issue a declaratory judgment interpreting and applying a portion of Section 11 of the Organic Act of Guam (codified at 48 U.S.C. § 1423a) relating to the debt limitation of the government of Guam.

1. Felix P. Camacho is the Governor of Guam and has standing to request a declaratory judgment from this Court pursuant to 7 G.C.A. § 4104.

JURISDICTION

2. This Court has original jurisdiction over this matter pursuant to 48 U.S.C. § 1424-1 and 7 G.C.A. § 4104.

3. With respect to the exercise of jurisdiction by this Court under 7 G.C.A. § 4104, this Court has held that:

> [T]o pass jurisdictional muster, a party seeking a declaratory judgment must satisfy three requirements: (1) the issue raised must be a matter of great importance; (2) the issue must be such that its

> resolution through the normal process of law is inappropriate as it would cause undue delay; and (3) the subject matter of the inquiry is appropriate for section 4104 review. There are only two subjects appropriate for section 4104 review: questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide, and questions that affect the powers and duties of the Governor and the operation of the executive branch....

In re Request of Gov. Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35, 2002 Guam 1, ¶ 9 (Feb. 7, 2002) (internal citations omitted).

MATTER OF GREAT IMPORTANCE

4. Public interest "signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government maybe substantially affected one way or the other by the issue's resolution." *In re Request of Governor Carl T. C. Gutierrez for a Declaratory Judgment as to the Organicity of Guam Public Law 22-42*, 1996 Guam 4, ¶ 4 (Order Oct. 24, 1996). This Request centers around the ability of the Governor to issue the bonds and bond anticipation notes authorized by Public Law 27-19.

5. On April 29, 2003 Bill 47 (COR) became Public Law 27-19 by signature of Governor Camacho. Bill 47 (COR) was introduced by the Committee on Economic Development, Retirement, Investments, Public Works & Regulatory Functions by request of Governor Camacho.

6. When the 27th Guam Legislature passed Bill No. 47, it found "that the accumulated General Fund deficit will result in current revenues available in the General Fund being insufficient to pay certain obligations of the General Fund and that a mechanism is needed to provide the necessary cash to the General Fund to pay such obligations until a surplus of current revenues over current expenditures can retire the deficit." Public Law 27-19, § 1 (2003).

7. Public Law 27-19 authorizes the Governor to issue government of Guam bonds and bond anticipation notes for the purpose of paying certain government of Guam expenses. Specifically, Public Law 27-19 authorizes the issuance of bonds in an aggregate principal amount not to exceed the amount necessary to provide $218,309,857 for the payment of certain General Fund expenses; and to provide $200,000,000 to fund an escrow to pay the debt service on all or a portion of the existing government indebtedness for the Government of Guam General Obligations Bonds, 1993 Series A, at a matched maturity.

8. Without the issuance of the bonds authorized by Public Law 27-19, the government is likely to face mass lay-offs, payless paydays and/or the shutdown of certain government operations.

9. The determination of the Governor's ability to issue the bonds authorized by P.L. 27-19 is clearly a matter of great importance to the government and the Island. Indeed, it may be the single-most important issues [sic] facing the government today.

REQUEST APPROPRIATE TO AVOID UNDUE DELAY

10. Related to the magnitude of this Request is the timing within which the government must obtain bond financing to avoid the shutdown of government operations, payless paydays and mass lay-offs. Intended to provide a fast track for the initiation of cases before the Supreme Court of Guam, 7 G.C.A. § 4104 provides a means by which "rulings could be obtained on important issues of law without time consuming litigation in the inferior court." *In re Request of Governor Carl T. C. Gutierrez for a Declaratory Judgment as to the Organicity of Guam Public Law 22-42*, 1996 Guam 4, ¶ 8 (Order Oct. 24, 1996). Undue delay would result from litigation of this issue in the lower court since it is likely that whatever the determination of the lower court, there will be an appeal of the decision. More importantly, however, seeking relief in this Court in the first instance would avoid delay

in the resolution of this urgent issue that substantially affects the operations of the government and the community as a whole and would reduce the harm that would be caused by the further delay in the issuance of the bonds. If the matter is first brought before the Superior Court of Guam, even on an expedited basis, a decision is unlikely for several months. The government's current financial condition will not permit several months of delay. The bond financing is critical to the continued operations of all branches and sectors of the government of Guam. Time is of the essence in having this matter resolved by the highest court of the Island.

SUBJECT MATTER OF REQUEST APPROPRIATE FOR REVIEW

11. The Court has identified two subjects appropriate for section 4104 review: questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide, and questions that affect the powers and duties of the Governor and the operation of the executive branch. *See In re Request of Gov. Carl T. C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1 at ¶ 9. This Request involves both subjects. The Governor is requesting an interpretation of a provision of the Organic Act of Guam (Section 11) and of certain local tax laws (11 G.C.A. §§ 24102, 24305-24307), as those provisions apply to the functions and duties of the Governor in carrying forth the mandate of the Legislature set forth in Public Law 27-19.

12. Public Law 27-19 empowers the Governor to execute contracts necessary for the issuance of government-backed bonds. The Attorney General of Guam has opined that, "[T]he Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded," thus clearly implicating the Governor's ability to carry out his duties as authorized by P.L. 27-19. *See* Correspondence from the Attorney General dated May 14, 2003, attached as Exhibit "A." Accordingly, the issues being

brought before this Court are the types permitted by section 4104.

REQUEST

13. Governor Camacho seeks a declaratory judgment on the following questions:

a. Whether the public indebtedness of Guam, after the contemplated issue of bonds authorized by Public Law 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and

b. Whether "aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam; and

c. Whether even if one or more of the triennial valuations required by 11 G.C.A. § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property on Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate appraised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 G.C.A. § 24306 as supplemented by the annual adjustments provided for in 11 G.C.A. § 24307.

14. Section 11 of the Organic Act of Guam (48 U.S.C. § 1423a) authorizes the issuance of bonds by the government and also sets a limitation on the public indebtedness of the government of Guam as follows:

> [W]hen necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.

48 U.S.C. § 1423a (emphasis added).

15. "Aggregate tax valuation of the property in Guam" is not defined in the Organic Act of Guam.

16. The amount of the current outstanding public indebtedness of Guam is approximately $384,678,135 (general and limited obligation bonds).

17. The contemplated issue of new bonds authorized by Public Law 27-19 is in the anticipated amount of $393,000,000, which amount includes principal, insurance and other related costs, as authorized by 5 G.C.A. § 1520(a), as added by Public Law 27-19, § 2, to pay down certain General Fund obligations (approximately $246,000,000) and to refund the Government of Guam General Obligations Bonds, 1993 Series A (approximately $147,000,000), which amount includes principal, insurance and other related costs.

18. The total public indebtedness of Guam after the contemplated issue of bonds authorized by Public Law 27-19 will be in the approximate amount of $642,680,390 (general and limited obligation bonds).

19. Since 1995, the Tax Assessor of Guam, the Director of the Department of Revenue and Taxation, has determined the value of property in Guam based on the 1993 triennial valuation with annual adjustments made to properties that have been improved or suffered loss and based on value alterations by the Board of Equalization. Such adjustments and alterations are made by the Department of Revenue and Taxation and the Board of Equalization pursuant to 11 G.C.A. § 24307 and 11 G.C.A. § 24501 et seq., respectively.

20. It has been the government of Guam's policy for the past ten-plus years to certify the "aggregate tax valuation of the property in Guam" for purposes of bond issuances based upon 100% of the appraised value of the taxable property on Guam derived from the most recent real property tax rolls.

21. The appraised value of the real property in Guam in 2002 has been certified by the Government of Guam at $11.3 billion, ten percent (10%) of which is $1.13 billion.

22. Based on the foregoing, it is clear that the public indebtedness of Guam, after the contemplated issue of bonds

authorized by Public Law 27-19, will be within the maximum permitted by Section 11 of the Organic Act of Guam.

23. Notwithstanding the certification by the Government of Guam as to the appraised value of the real property in Guam, the Attorney General of Guam has taken the position that "aggregate tax valuation" is the equivalent of "value" as that term is defined in Guam's Real Property Tax Law (i.e., 35% of the appraised value) and that triennial valuations under 11 G.C.A. § 24306 must be completed in order to determine the aggregate tax valuation of property in Guam, which positions have effectively halted the issuance of the bonds authorized by Public Law 27-19. *See* Exhibit "A" and additional correspondence from the Attorney General dated May 14, May 22, and June 27, 2003, which are attached hereto as Exhibits "B," "C" and "D."

24. In light of the dispute caused by the Attorney General over whether the issuance of bonds pursuant to Public Law 27-19 will comply with the mandates of Section 11 of the Organic Act of Guam, a final and conclusive resolution of that question by this Honorable Court is required.

PRAYER FOR RELIEF

WHEREFORE, Governor Camacho asks the Court for a judgment declaring that:

1. The public indebtedness of Guam, after the contemplated issue of bonds authorized by Public Law 27-19, will be within 10% of the aggregate tax valuation of the property in Guam, the maximum permitted by Section 11 of the Organic Act of Guam; and

2. "Aggregate tax valuation of the property on Guam" as that phrase is used in Section 11 of the Organic Act of Guam means one hundred percent (100%) of the appraised value of the taxable property on Guam;

3. Even if one or more of the triennial valuations required by 11 G.C.A. § 24306 has not been conducted, the Government may conclusively presume that the "aggregate tax valuation of the property on Guam" as used in Section 11 of the Organic Act of Guam is not less than the aggregate

appraised value ascertained by the Director of the Department of Revenue and Taxation ("DRT"), as assessor, pursuant to the last completed valuation conducted pursuant to 11 G.C.A. § 24306 as supplemented by the annual adjustments provided for in 11 G.C.A. § 24307.

Dated this 1st day of July, 2003.

CALVO AND CLARK, LLP
Attorneys at Law
Attorneys for the
Honorable Felix P. Camacho
Governor of Guam

By: /s/
ARTHUR B. CLARK

VERIFICATION

GUAM, U.S.A.)
) ss.:
City of Hagåtña)

The undersigned, deposes and says: That he is the petitioner in the foregoing Request for Declaratory Judgment; that the facts contained therein are true and correct to the best of his knowledge and belief, except as to the matters stated upon information and belief; and as to those matters, he believes them to be true.

DATED this 1st day of July, 2003.

/s/
FELIX P. CAMACHO

SUBSCRIBED AND SWORN to before me on the day and year first above-written.

/s/ Melissa A. Tydingco
Notary Public
My Commission Expires: 10/4/04

[NOTARIAL SEAL]

EXHIBIT "A"

[SEAL]
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May 14, 2003

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Office of *I Maga'lahen Guåhan*
P.O. Box 2950
Hagåtña, Guam 96910

The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

This Office has recently conducted a *preliminary* review of Public Law Number 27-19, entitled "AN ACT TO *ADD* §1520 TO TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE GOVERNOR OF GUAM, I MAGA'LAHEN GUÅHAN, TO ISSUE GOVERNMENT OF GUAM BONDS AND BOND ANTICIPATION NOTES FOR THE PURPOSE OF PAYING CERTAIN GOVERNMENT OF GUAM EXPENSES; AND TO *AMEND* FOR RELATED PURPOSES CERTAIN RELATED PROVISIONS OF LAW."

As a courtesy I respectfully advise you that the undersigned Attorney General will *not* be able to execute the loan given the current posture of the law, and facts as I understand them.

According to 5 G.C.A. § 22601, *Execution of Contracts*, the undersigned Attorney General is required by law to review, and if legally correct, approve all contracts for the Government of Guam. Section 22601 states,

> **"Section 22601. Execution of Contracts.** All contracts shall, after approval of the Attorney General, be submitted to the Governor for his signature. All contracts of whatever nature shall be executed upon the approval of the Governor."

Although Public Law Number 27-19:2 provides that the Board of Directors for the Guam Economic Development Authority must approve the bonds prior to their issuance, it does *not* discharge the undersigned's Office from the responsibility to review, and if legally correct, execute the loan obligation contract.

According to the 1950 Organic Act of Guam, 48 U.S.C. § 1423a, Congress limited the power of the Government of Guam to borrow as follows,

> "... Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 16 per centum of the aggregate tax valuation of property in Guam. ..."

Guam law requires that the valuation of property for tax purposes be conducted every three (3) years. Section 24306 of Title 11 of the Guam Code Annotated provides,

> "**Section 24306. Same: Valuation.** For the calendar year 1977 the valuation of all property shall be the 1978 valuation as shown on the assessment roll of the government for 1976, provided, however, that in instances where property has been either improved or suffered loss in 1977 the assessor shall take into consideration such improvement or loss and adjust the assessment roll for such property accordingly. Commencing with the first Monday in March of 1978 and continuing every three (3) years thereafter the assessor shall reascertain the value of all property in Guam and such valuation shall be used as the basis for assessment during the annual adjustments for property which has been either improved or suffered loss, as provided by § 24307." (Emphasis added).

The undersigned is informed that the last property assessment occurred in 1993, to become effective in 1995. The undersigned Attorney General finds that although the Organic Act places a ceiling on the maximum loan, Guam law places a requirement that the valuation used in the Organic Act loan ceiling, 48 U.S.C. § 1423a, be applied.

Based upon the foregoing laws, the 1993 valuation has long since expired, and the over $248,000,000 loan legislation cannot be executed until a new valuation is conducted. Further, common sense dictates that our economic condition is much worse today than in 1993, and is manifested in our need to borrow so much money through Public Law Number 27-19, leading to the logical conclusion that the 1993 valuation is no longer accurate and in fact is probably significantly lower.

The undersigned Attorney General recommends that the Government of Guam *immediately* conduct its property assessment as required by law. Otherwise, if the loan is immediately required, this Office is prepared to seek a declaratory judgment on behalf of either or both of your Offices, requesting from the Supreme Court of Guam, pursuant to 7 G.C.A. § 4104, a declaratory judgment whether another properly assessment is required by Guam law to borrow. *However*, the undersigned Attorney General's position is that the Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded.

According to figures we received, the 1993 property valuation (effective 1995) was for $4,384,422,245. I understand that the tax valuation is 35% of said property valuation, making the aggregate tax valuation $1,534,547,785.75. Under the Organic Act, our maximum borrowing capacity ("10% in excess of aggregate tax valuation" back in 1993 (effective 1995)) was $1,688,002,564.32. *However*, the legal problem is that the figure for determining our maximum loan "ceiling" has long since expired and can no longer be used. Without knowing what is the maximum borrowing limit, I cannot determine if we have exceeded said ceiling given the Government of Guam's current outstanding loans, thereby ensuring compliance with the Organic Act requirement, and therefore sign the bond issuance.

The undersigned does *not* undertake issuing this letter lightly, but must comply with not only the letter of the law,

but the spirit of it as well. We transmit this letter in order to try to provide as much advance notice as possible. The Organic Act provision is quite clear in its mandate that no public indebtedness shall be allowed in excess of 10% of the aggregate tax valuation, but that valuation has long since expired.

Please call me if you have any questions. Thank you.

Sincerely,

/s/
Douglas B. Moylan

cc: Senator Mark Forbes, Legislative Minority Leader

EXHIBIT "B"

[SEAL]

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May 14, 2003

The Honorable Felix P. Camacho
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The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

In furtherance of the undersigned's letter today, the *maximum* borrowing authority of the Government of Guam in 1993 under the Organic Act should be $153,454,778.56 (10% of $1,534,547,785.75). The figure in the undersigned's letter read "$1,688,002,564.32" on page 3.

Thank you for your attention to this matter.

Sincerely,

/s/
Douglas B. Moylan

cc: Senator Mark Forbes, Legislative Minority Leader

EXHIBIT "C"

[SEAL]
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May 22, 2003

The Honorable Felix P. Camacho
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The Honorable Ben Pangelinan
Speaker
Mina' Bente Siete I Liheslaturan Guåhan
155 Hesler Street

Hagåtña, Guam 96910

SUBJECT: $248,000,000+ LOAN APPROVAL; P.L. NO. 27-19

Dear Governor Camacho and Speaker Pangelinan:

Earlier this week the undersigned Attorney General met with Lt. Governor Kaleo Moylan and Vice-Speaker Aguon. Guam Economic Development and Commerce Authority ("GEDCA") officials and their local counsel were likewise present

Based upon our conversation I now see two (2) problems facing this Office's execution of the loan indenture authorized in Public Law Number 27-19, prompting me to again request that you immediately authorize a petition be brought before the Supreme Court of Guam for declaratory judgment relief under 7 G.C.A. § 4104. Those problems are:

1. What is the value to gauge our calculations on (actual assessed land value (11 G.C.A. § 24306) or extrapolated values based upon projections and estimates); and

2. What definition to apply for "*aggregate tax valuation.*"

GEDCA's definition for "*aggregate lax valuation,*" used by Mr. Dirks, GEDCA's bond counsel, 1 understand, is Fair Market Value ("FMV") less exemption(s), which will give an approximately $1.1B loan ceiling, using their extrapolated property value figures. The Government of Guam currently owes about $380M. Under their valuation and definition the Government of Guam can still borrow money.

However, if we use the definition in the Guam Code Annotated and used by the Department of Revenue and Taxation for "*aggregate tax valuation,*" and applying GEDCA's extrapolated property value figures, our debt ceiling is about $380M, which the Government of Guam has already reached. I am inclined to decline signing the bond indenture because of the Government's failure to perform an actual assessment and consequently not understand our true value of property on Guam, and because the definition that is being utilized by GEDCA is inconsistent with how the Gov-

ernment of Guam has been valuing land for property tax purposes.

Consequently, based upon our Monday, May 19, 2003 meeting. I remain unconvinced that Guam is legally permitted to engage in any further loans. I understand that a telephone conference is being arranged with GEDCA's bond counsel, Mr. Stan Dirks to further discuss this matter though and I remain willing to explore further discussion and options. I am also troubled by statements to change Guam law to achieve the goal to permit the Government to borrow more money.

Finally, please note that I previously transmitted legislation to permit the Attorney General to seek declaratory relief before the High Court, like yourselves, anticipating situations such as this might arise. The undersigned Attorney General remains prepared to apply before the High Court on behalf of the People if you are reluctant to do so yourselves to finally resolve this important issue. Attorneys opinions do not give the finality which the High Court can provide.

Please call me if you have any questions. Thank you.

Sincerely,

/s/
Douglas B. Moylan

cc: The Honorable Kaleo S. Moylan, Lt. Governor of Guam
The Honorable Frank Aguon, Vice-Speaker
The Honorable Mark Forbes, Senator and Legislative Minority Leader

EXHIBIT "D"

[SEAL]
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June 27, 2003

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Office of *I Maga'lahen Guåhan*
P.O. Box 2950
Hagåtña, Guam 96910

SUBJECT: BORROWING CEILING

Dear Governor Camacho:

Thank you for your letter of June 26, 2003, inviting further dialogue regarding the legality of issuance of the bonds pursuant to Public Law Number 27-19. Counsel for the Guam Economic Development and Commerce Authority also provided us with the benefit of some of his research this morning, and the materials are being reviewed carefully.

While this Office hopes to find an acceptable resolution of our differences regarding issuance of bonds, the Supreme Court of Guam application should not be further delayed, given your stated urgency in the issues facing our Government. Our primary recommendation remains to perform an actual appraisal, whether as required by law or in an expedited form ratified by the legislature.

Unfortunately, Public Law Number 27-21 does *not* provide a complete resolution. It defines "*aggregate tax value*," but such a local definition cannot change the actual value of real estate and improvements on Guam. Moreover, local law

cannot define the meaning of this entire phrase. Previously, we suggested that Congress' use of the term "tax" relegated this definition to how Guam actually taxed real estate and improvements on Guam, such as thirty-five percent (35%) of appraised value formula contained in Guam law. This remains a concern, but is *not* determinative since we have yet to establish an accurate and reliable value for real estate and improvements on Guam, which only an actual appraisal could remedy.

Of course, we wish that Guam's market conditions were less dismal, but creating a refined value definition simply does *not* change the reality that real estate values have materially deteriorated on Guam in the last several years. The debt ceiling contained in § 11 of the Organic Act is simply a credit limit, and borrowers just don't have the luxury of raising credit limits to suit their financial needs, no matter how dire those needs may be.

Clearly, full analysis of the debt ceiling requires answering the following two (2) questions:

> 1. How much is the aggregate value of the taxable property on Guam? *and*
>
> 2. How much indebtedness has already been incurred?

With respect to the first question, it remains our position that the 1993 appraisal cannot be used anymore to achieve a reasonable analysis of the actual current value of properties on Guam. Nor can we haphazardly adopt a figure which should have been based upon an actual 1999 appraisal, but was not. Further, we believe that the lack of resources and a deficient computer system upon which the Department of Revenue and Taxation has been forced to rely, have resulted in a materially unreliable, outdated and inaccurate annual update of that appraisal. The Board of Equalization valuations from 1995 through 2002, for example, indicate a net increase in property values of almost $1.3 billion, ending in a "value" of $11.3 billion, including exempt property.

Since Public Law Number 27-19:2(a) specifically prohibits its issuance of bonds in violation of the debt limitation provision of the Organic Act, it follows that approval of a bond issue must be preceded by reasonably founded assurances that the limitation has *not* been exceeded. Please let me know what is being considered indebtedness for that purpose.

The undersigned Attorney General remains open to further discussion and requests that your counsel please work with us to structure the petition you intend to file before the Supreme Court of Guam to identify all the relevant issues. Thank you.

Sincerely,

/s/
Douglas B. Moylan

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: FILED
SUPREME COURT OF GUAM
JUL 1 4:25PM '03]

ORDER

This matter comes before the court pursuant to a Request for Declaratory Judgment filed by the Governor of Guam, Felix P. Camacho ("the Governor"), in the above-captioned matter on July 1, 2003. The Governor requests that this court issue a declaratory judgment under Title 7 GCA § 4104, regarding the interpretation of section 1423a of the Organic Act of Guam (codified at 48 U.S.C. § 1423a).

This court has original jurisdiction to render declaratory judgments pursuant to Title 7 GCA § 4104. However, in order for this court's jurisdiction to be properly invoked through section 4104, any request for declaratory judgment must satisfy three jurisdictional requirements, articulated in *In re Request of Gutierrez*, 2002 Guam 1, ¶ 9, which follow:

> (1) the subject matter of the inquiry must be appropriate for section 4104 review;
>
> (2) the issue raised must be a matter of great public importance; and
>
> (3) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay.

See In re Request of Gutierrez, 2002 Guam 1 at ¶ 9 (citing 7 GCA § 4104).

A. Subject Matter of the Inquiry

In re Request of Gutierrez enumerates the two subject matters appropriate for an inquiry under 7 GCA § 4104. They are (1) questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide; and (2) questions that affect the powers and duties of the Governor and the operation of the executive branch, or of the Legislature. *See In re Request of Guritierrez*, 2002 Guam 1 at ¶ 9.

According to the request, Public Law 27-19 "authorizes the Governor to issue government bonds and bond anticipation notes for the purpose of paying certain government of Guam expenses." Request for Declaratory Judgment, p. 2, ¶ 7. However, "[t]he Attorney General of Guam has opined that, '[T]he Government of Guam cannot borrow any money since we are unable to determine whether the Organic Act maximum ceiling for borrowing has in fact been already exceeded.' " Request for Declaratory Judgment, p. 4, ¶ 12.

Applying the subject matter jurisdictional requirement to the challenges brought forth by the Governor, the court finds that the questions of the interpretation of 48 USC § 1423a, and Public Law 27-19, as well questions involving the powers and duties of the Governor and the operation of the executive branch, are properly before this court pursuant to 7 GCA § 4104.

B. Great Public Importance

"[P]ublic interest signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government may be substantially affected one way or the other by the issue's resolution." *Id.* at ¶¶ 26-28. The Governor's request states that, without the issuance of the bonds as mandated by Public Law 27-19, "the government is likely to face mass lay-offs, payless paydays and/or

the shutdown of certain government operations." Request for Declaratory Judgment, p. 3, ¶ 8.

The court finds that questions of the interpretation of 48 USC § 1423a, in light of Public Law 27-19, as well questions involving the powers and duties of the Governor and the operation of the executive branch are matters of great public importance. *See In re Request of Gutierrez*, 2002 Guam 1 at ¶ 28 (holding that any challenge "related to the Governor's ability to manage the executive branch, are matters of 'great public importance' as they are 'of consequence in terms of governmental function and resources.' ").

C. Normal Process of Law Causes Undue Delay

The anticipated delay through the normal processes of law must be "excessive or inappropriate" as compared to the process of law through the filing of a request for declaratory judgment under 7 GCA § 4104. *Id.* at ¶ 29. Title "7 GCA § 4104 was intended to provide a fast track for the initiation of cases before the Supreme Court of Guam so that rulings could be obtained on important issues of law without time consuming litigation in the inferior court." *Id.* (citation omitted).

The Governor in his request states that "[i]f the matter is first brought before the Superior Court of Guam ... a decision is unlikely for several months. The government's current financial condition will not permit several months of delay." Request for Declaratory Judgment, p. 3 at ¶ 10.

The court finds that a resolution of the questions relating to the interpretation of law and the powers and duties of the Governor of Guam require a speedy resolution and thus, the Governor has satisfied this jurisdictional requirement.

In accordance with the foregoing, having determined that the request involves a matter of great public interest, that the normal processes of law would cause undue delay, and that the relief requested falls within our jurisdiction under 7 GCA § 4104, the court hereby accepts the Governor's request for declaratory judgment for consideration pursuant to Rule 27 of the Guam Rules of Appellate Procedure.

SO ORDERED, this 1st day of July, 2003.

/s/
F. PHILIP CARBULLIDO
Chief Justice

IN THE SUPREME COURT OF GUAM

No. CRQ03-001

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

[STAMP: RECEIVED
JUL 07 2003 3:01PM
ATTORNEY GENERAL'S OFFICE]

DECLARATION OF ARTEMIO B. ILAGAN IN SUPPORT OF GOVERNOR FELIX CAMACHO'S REQUEST FOR DECLARATORY JUDGMENT

I, Artemio B. Ilagan, declare that:

1. I am the Director of the Department of Revenue and Taxation ("DRT"), Government of Guam.

2. The Real Property Tax Division of the Department of Revenue and Taxation is responsible for compiling, on or before September 1 each tax year, a Tax Roll identifying all taxable properties by legal lot description, owners of record, appraised and assessed values and corresponding tax assessments.

3. The mass appraisal method of valuation is primarily used to determine the appraised value of taxable property on Guam. The last reappraisal of taxable properties was completed in 1993. The updated values were applied against all properties beginning in tax year 1995.

4. The government of Guam spent approximately $ 1.5 million to conduct the 1993 revaluation.

5. Improvements and additions and destruction and/or demolitions of real property and improvements are reviewed

annually by the Real Property Tax Division and adjustments to the values of the taxable properties are made accordingly.

6. Such annual adjustments are made using the Assessment Valuation Manual prepared for the Department of Revenue and Taxation by Cowell & Co., Inc., real estate consultants, in 1994. A true and correct copy of the Assessment Valuation Manual is attached as Exhibit "A."

7. Cowell & Co, Inc. was retained by the government of Guam in 1993 to complete the 1993 revaluation. The 1993 revaluation involved valuing all taxable real property, land and improvements, for ad valorem tax purposes. In conjunction with the study, a detailed computerized valuation system was developed and incorporated into the existing computer system of the Department of Revenue and Taxation.

8. The computerized valuation system was used during the 1993 revaluation and is currently used by the Real Property Division. The computerized valuation system allows the Real Property Division to prepare individual property valuation analysis reports ("PVA") for all properties on Guam and is used in conjunction with an inspection check list that was developed as part of the 1993 revaluation. The PVA provides details to the valuation of the property and shows the value conclusion. A copy of a form inspection checklist is attached as Exhibit "B."

9. Since 1995, the Department of Revenue and Taxation has lacked the funding to perform of the triennial valuations called for by 11 G.C.A. § 24306. Absent adequate funding, the Real Property Tax Division lacks the mechanism to conduct the triennial valuations. Accordingly, since 1995 the Department of Revenue and Taxation has been determining the value of property in Guam based on annual adjustments to the 1993 revaluation for property that has been improved or suffered loss. Additionally, since 1995 valuations of real property in Guam have been adjusted based on assessment alterations by the Board. Such adjustments and alterations are made by the Department of Revenue and Taxation and the Board of Equalization pursuant to 11 G.C.A. § 24307 and 11 G.C.A. § 24501 et seq., respectively.

10. The process with respect to revaluing property because of destruction/demolitions generally works as follows: A taxpayer reports to the Real Property Division that his home was demolished by a natural disaster or other cause, or the Real Property Division receives a demolition permit from the Department of Public Works. A property tax appraiser then conducts a site investigation to confirm the destruction/demolition. If it is confirmed that the improvement was demolished, the property tax is adjusted accordingly.

11. The process with respect to valuing improvements on existing buildings or the construction of new buildings generally works as follows: Occupancy permits are submitted to the Real Property Tax Division for clearance. *See* the Real Property Tax Clearance form attached as Exhibit "C." A property tax appraiser then conducts a site investigation to confirm the renovation/addition or new construction. To aide in his appraisal, the tax appraiser uses an inspection checklist form (referred to above) and fills out a Property Record and Appraisal Card. *See* the Property Record and Appraisal Card attached as Exhibit "D." Appraisals of new buildings are based on construction costs determined as part of the 1993 valuation. Appraisals of renovated buildings are based on construction costs determined as part of the 1993 valuation, less depreciation up to 1993 using a depreciation schedule created as part of the 1993 revaluation. *See* the construction cost schedule and depreciation schedule at pages 37 and 39 of Exhibit "A."

12. With respect to land values, the direct market comparison approach based on 1993 market values derived from the 1993 valuation is employed by the DRT. As part of the 1993 triennial valuation, detailed land value maps were formulated that indicate land values on a dollar per square meter basis for various locations throughout the island. Estimated unit rate land values were determined based on analysis of existing market data and considering location, accessibility, utilities available, zoning, general topography and other pertinent factors.

13. Adjustments to appraised values are also made by the Appraisal Branch for technical errors in the computation of the value of the land and/or building. For example, errors in the type of structure (concrete versus wood) or land or building area can be corrected by the Appraisal Branch after a site inspection is completed.

14. Value adjustments to the 1993 revaluation are also made by the Board of Equalization (the "Board"). Taxpayers can appeal assessments by filing an appeals application with the Board between September 15 and October 15 each year. Taxpayers requesting value adjustments must fill out an Application for the Board of Equalization. *See* Exhibit "E." Taxpayers are allowed to present their case to the Board during hearings. An appellant can make a case for readjustment by giving oral testimony of a prior appeal by an adjacent property owner, by submitting classified advertisements of comparable sales or by submitting an appraisal of his/her property. The Appraisal Branch Supervisor is also given an opportunity to explain how the value conclusion was reached and assessment determined.

15. The Board from the last administration consisted of 3 members. They are Joseph R. Ada (term expired 06/06/01), Frederic A. Leon Guerrero (term expired 02/16/03), Frederico W. Mendiola (term expires 06/06/05—has not been replaced). The last seat was not filled. Governor Camacho has appointed three new members to the Board to replace those whose terms have expired. They are Cato Camacho, Jon Bargfrede and Elmore Cotton. These appointees are awaiting confirmation.

16. In Tax Year 2002, the Real Property Division received 57 Board of Equalization appeal applications. Of those appeals, approximately six represent condominium/multi-family residences that may translate to roughly 300 individual accounts.

17. There are about 236 pending appeal applications for tax year 2001, with approximately 300 to 500 individual accounts affected.

18. There are approximately 6 to 10 pending appeal applications for tax year 2000. There are no pending appeal applications from years prior to 2000.

19. The Tax Rolls are certified by the Board on or about October 31 each year.

20. Attached as Exhibit "F" is a true and correct copy of the certified tax rolls for tax years 1994 through 2002.

21. As of the date the 2002 Tax Rolls were certified by the Board (October 31, 2002) there were 58,884 buildings and land parcels assessed by DRT.

22. As of the date the-2002 Tax Rolls were certified by the Board, the total appraised value of buildings and land on Guam was $11.333 billion ($6.249 billion for land and $5.084 for buildings).

23. Of the $11.333 billion, $183.7 million ($173.6 for land and $10.1 for buildings) represents the appraised value of land and buildings that are 100% exempted from taxation (i.e., government, religious, and non-profit owned properties). *See* the 2002 Real Property Tax Exemption Summary attached as Exhibit "G."

24. The exemptions column of the 2002 Tax Rolls also includes rate reductions in real property tax calculated pursuant to provisions in the Guam Real Property Tax law such as 11 G.C.A. §§ 24110 and 24112.

I declare under penalty of perjury under the laws of Guam (6 G.C.A. § 4308) that the foregoing is true and correct.

Executed this 7th day of July, 2003, in Tamuning, Guam.

/s/
ARTEMIO ILAGAN

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. Case No. 03-72836

[STAMP: RECEIVED
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U.S. COURT OF APPEALS
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IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO
RELATIVE TO THE INTERPRETATION AND APPLICATION
OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Supreme Court of Guam
Case No. CRQ03-001

GOVERNOR FELIX P. CAMACHO,
Respondent-Petitioner,
v.

DOUGLAS B. MOYLAN,
Petitioner-Party in Interest.

**DECLARATION OF FELIX P. CAMACHO
IN SUPPORT OF MOTION TO EXPEDITE**

From the Supreme Court of Guam

I, Felix P. Camacho, hereby declare as follows:

1. I am the duly-elected Governor of Guam. If called as a witness in this matter, I could and would competently testify as follows:

2. I took office in January 2003.

3. The Government of Guam and its people face severe economic challenges. In the last few years, Guam's unemployment rate has skyrocketed while the Government of Guam has lost approximately $100 million in revenue.

4. These economic hardships are the result of a series of devastating events that have savaged the Island's tourism industry, which accounts for 60% of Guam's revenue.

5. Prior to 9/11, the severe economic recession in Asia had caused correspondingly steady and severe declines in Guam tourism rates. The 9/11 terrorists attack caused the previously steady decline to take a severe downward turn as many Asian tourists became unwilling to engage in international travel, especially to any part of the United States.

6. The severity of the down-turn after 9/11 caught many Island businesses off-guard. The loss in revenue forced many businesses to lay-off employees, and forced many others into bankruptcy. This had a corresponding effects on the tax revenues of Guam.

7. In July 2002, just as it appeared that Guam's tourism industry was on the road to recovery, Guam was hit by a major typhoon. Five months later, a record-setting super-typhoon struck the Island in December of 2002. Guam was left devastated.

8. This did not end the barrage. In the winter and spring of 2003, the Guam economy faced the triple blows to international tourism in Asia caused by SARS, the war in Iraq, and increased tensions with North Korea.

9. My administration has been compelled to address the economic crisis in Guam through harsh austerity measures. This has included imposing a 32 hour work week for thousands of government employees, and withholding payment to vendors, tax-payers, and utilities. It has also included substantial cut-backs to a number of vital government programs, including education, public safety, health, and social services.

10. All of this is occurring at a time when the revenue shortfalls are contributing to Island-wide water shortages

and power black-outs. These major utility problems affect not only our community, but also the significant U.S. military bases located on Guam.

11. The issuance of the bond at issue in this litigation is a key step towards re-igniting the economic recovery of Guam and ensuring the continued funding of critical government programs. The bond will permit funding that is badly needed for Guam's schools, its public safety and health systems, and its social services. The bond also will permit the government to issue millions in overdue tax refunds, money that then will be infused into the Guam economy.

12. The bond also include money earmarked for the utility companies. This will permit the needed repairs to the Island's power and water infrastructure. It also will permit those utilities to comply with federal court orders requiring new environmental protections in the operations of those utilities. Absent the bond funding, the utilities are unlikely to be able to comply with the court orders, and could face substantial fines that can only worsen their financial condition.

13. Thus, because so much depends on the bond measure, an expedited determination by this Court is an absolute necessity for the people of Guam and the Government of Guam.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing are true and correct to the best of my knowledge and belief.

Executed this 3rd day of November, 2003 in Tamuning, Guam.

/s/
FELIX P. CAMACHO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. Case No. 03-72836

IN RE: REQUEST OF GOVERNOR FELIX P. CAMACHO RELATIVE TO THE INTERPRETATION AND APPLICATION OF SECTION 11 OF THE ORGANIC ACT OF GUAM

Supreme Court of Guam
Case No. CRQ03-001

GOVERNOR FELIX P. CAMACHO,
Respondent-Petitioner,
v.

DOUGLAS B. MOYLAN,
OFFICE OF THE ATTORNEY GENERAL,
Petitioner-Party in Interest.

DECLARATION OF FELIX P. CAMACHO IN SUPPORT OF RENEWED MOTION TO EXPEDITE

From the Supreme Court of Guam

I, Felix P. Camacho, hereby declare as follows:

1. I am the duly-elected Governor of Guam. If called as a witness in this matter, I could and would competently testify as follows:

2. Guam, continues to face economic hardship as it seeks to recover from the severe damage done to its Japanese tourism based economy by September 11, 2001, SARS, a super-typhoon that caused record damage to the island,

and a decade-long recession in Japan that only recently has shown signs of improving.

3. Although Guam's economy is now rapidly improving due to sizeable increases in its tourism market, its need for government of Guam bonds at in this case has not lessened because repairs still must be made to an infrastructure that suffered greatly in recent years.

4. The government of Guam, as well as certain Guam utilities potentially face daily fines under consent decrees due to their inability to finance projects to correct breaches of environmental law.

5. Many residents (and schools) in the south of Guam still face days (and sometimes weeks) without a regular water supply due to Guam's inability to finance repairs to that system.

6. Guam's sole civilian hospital urgently needs to be replaced, and currently offers half as many beds per capita as the average mainland hospital.

7. Guam's public high schools have delayed admission to over a hundred students because of the inability to accommodate them.

8. Guam has already lost millions of dollars in future interest payments due to interest rate increases in the last year while this litigation has been pending.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing are true and correct to the best of my knowledge and belief.

Executed this 3rd day of November, 2004 in Hagatna, Guam.

/s/
FELIX P. CAMACHO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

[STAMP: FILED
DEC 15 2004
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS]

D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

In response to the renewed motion to expedite, filed on December 8, 2004, the parties are informed that no opinion in this case can issue until the case of *Santos v. People of Guam*, Case No. 03-70472, is decided, clarifying our continued certiorari jurisdiction over decisions from the Supreme Court of Guam.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

[STAMP: FILED
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CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS]

D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

Submission of this case is withdrawn and deferred pending a ruling in *Santos v. People of Guam*, No. 03-70472.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-72836

[STAMP: FILED
FEB 01 2006
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS]

D.C. No. CR-03-00001-CRQ
District of Guam, Agana

DOUGLAS B. MOYLAN,
Petitioner,

v.

FELIX P. CAMACHO,
Respondent.

ORDER

Before: FARRIS, NOONAN, and RAWLINSON, Circuit Judges.

This case is hereby resubmitted effective February 1, 2006.

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OFFICE OF THE CLERK

No. 06-116

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN,
ATTORNEY GENERAL OF GUAM,

Petitioner,

v.

FELIX P. CAMACHO,
GOVERNOR OF GUAM,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GUAM

BRIEF FOR PETITIONER

SETH P. WAXMAN
Counsel of Record
RANDOLPH D. MOSS
JONATHAN G. CEDARBAUM
KELLY THOMPSON COCHRAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
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(202) 663-6000

QUESTIONS PRESENTED

1. Whether the time for filing a petition for writ of certiorari from this Court was tolled while a petition for writ of certiorari or writ of certiorari with respect to the same judgment was pending before the United States Court of Appeals for the Ninth Circuit.

2. Whether the Supreme Court of Guam erred in interpreting the phrase "aggregate *tax* valuation" in the Guam Organic Act's debt-limitation provision, 48 U.S.C. § 1423a (emphasis added), as tying the limit on borrowing by the Guam territorial government to the full value of property on Guam rather than to the assessed value used for purposes of taxation.

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OPINIONS BELOW

The decision of the Supreme Court of Guam (Pet. App. 1a-35a) is unreported, but is available at 2003 WL 21697180. The order of the Court of Appeals for the Ninth Circuit granting petitioner's petition for a writ of certiorari (Pet. App. 37a) is unreported. The court of appeals' order dismissing the case for lack of jurisdiction in light of Congress's shifting of certiorari jurisdiction over decisions of the Guam Supreme Court to this Court (Pet. App. 39a) is unreported.

JURISDICTION

This Court has jurisdiction to review judgments of the Supreme Court of Guam pursuant to 28 U.S.C. § 1257 and 48 U.S.C. § 1424-2 (as amended in 2004). Pet. App. 48a. Petitioner's timely request for an extension of time within which to file a petition for a writ of certiorari was granted on May 31, 2006. The petition for a writ of certiorari was timely filed on July 19, 2006, and granted on September 26, 2006. *See infra* pp. 14-25.

STATUTORY PROVISIONS INVOLVED

Section 11 of the Organic Act of Guam states in pertinent part:

> [t]axes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be consid-

> ered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a (first and third emphases added).

Section 22b of the Organic Act of Guam states:

> The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.

48 U.S.C. § 1424-2.

Until amended by Congress in 2004, that section continued:

> *Provided*, That for the first fifteen years following the establishment of the appellate court authorized by section 1424-1(a) of this title, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

48 U.S.C. § 1424-2 (2000).

Section 2101(c) of Title 28 of the U.S. Code states:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

28 U.S.C. § 2101(c).

Other relevant statutory provisions are set forth in the appendix to the petition for a writ of certiorari. Pet. App. 41a-65a.

INTRODUCTION AND STATEMENT OF THE CASE

This is a case about maintaining a limitation placed by Congress on the territorial government of Guam in order to ensure that it remains fiscally responsible and democratically accountable to its U.S. citizen electorate. Specifically, the case concerns a provision in the Organic Act of Guam, the federal statute that serves as that territory's constitution, which caps the amount of general obligation debt the government of Guam can assume at 10% of the "aggregate tax valuation" of property in the territory. Petitioner, the Attorney General of Guam, acting pursuant to his statutory duty to review the legality of all government contracts, has refused to approve bond issues that would push the territory's indebtedness above this limit, thereby subjecting future generations of Guam taxpayers to financial burdens that the legislative and executive branches are apparently unwilling to impose on current residents. In a decision that validated the excessive levels of borrowing sought by the territorial legislature and respondent Governor, the Supreme Court of Guam misinterpreted Guam's debt-limitation provision in contravention of both its clear text and undisputed purposes.

Petitioner has sought for more than three years to obtain appellate review by an Article III court of the Guam

Supreme Court's decision, which was an exercise of original jurisdiction based on only one week's briefing and two weeks of deliberation. At the time of the Guam Supreme Court's ruling, the Court of Appeals for the Ninth Circuit, not this Court, possessed exclusive jurisdiction to review judgments of the Guam Supreme Court by writ of certiorari. Petitioner's initial timely appeal to the Ninth Circuit was dismissed after full briefing and argument because the Ninth Circuit ultimately concluded that its jurisdiction had been eliminated by an intervening amendment to the Guam Organic Act. Petitioner then promptly filed a petition for writ of certiorari with this Court. Petitioner's timely certiorari petition to the Ninth Circuit and the Ninth Circuit's granting of that petition suspended the finality of the Guam Supreme Court's judgment and so should be treated as having tolled the running of the time period for filing certiorari petitions with this Court. A contrary determination would penalize petitioner for diligently following the avenues of appeal that were open to him and prevent review of the Guam Supreme Court's decision by any Article III court.

1. Overview Of The Guam Organic Act

Guam, an island of approximately 200 square miles located in the west central Pacific Ocean, is an unincorporated territory of the United States. Acquired by the United States in the Spanish-American War, the island was administered by the Navy from 1898 to 1950. *See Ngiraingas* v. *Sanchez*, 495 U.S. 182, 186 (1990). In 1950 Congress enacted the Organic Act of Guam, 48 U.S.C. §§ 1421 *et seq.*, which serves as Guam's constitution, *see* 48 U.S.C. § 1423a; *Haeuser* v. *Department of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996). The Organic Act defines the structure and powers of Guam's territorial government and guarantees the people of Guam, who are U.S. citizens, the fundamental individual rights enshrined in the Bill of Rights. The Organic Act is designed to secure for the people of Guam the benefits of a democratically accountable local government constrained by the rule of law. *See* S. Rep. No. 81-2109, at 1-2 (1950).

The Governor of Guam is popularly elected to a four-year term. 48 U.S.C. § 1422. The Attorney General of Guam is also directly elected to a four-year term. 48 U.S.C. § 1421g(d)(2); 5 Guam Code Ann. § 30101(a). The Attorney General is the territory's chief legal officer and, unlike other executive officials, may not be removed from office by the Governor. 48 U.S.C. §§ 1422, 1421g(d)(1)-(2); 5 Guam Code Ann. §§ 30101(c), 3102. Guam law provides that the Governor may not execute any contracts on behalf of the territorial government without the Attorney General's approval of their legality. 5 Guam Code Ann. § 22601.

Section 11 of the Organic Act empowers the Guam Legislature to enact laws on "all rightful subjects of legislation" not inconsistent with the Organic Act or other federal laws applicable to Guam. 48 U.S.C. § 1423a. It then immediately limits the Guam Legislature's authority in one crucial respect: excessive borrowing. Section 11 specifically mandates that

> [t]axes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and *when necessary to anticipate taxes and revenues*, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the *aggregate tax valuation* of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

Id. (first and third emphases added).

While Congress strictly limited the amount of debt the territorial government can assume by linking the government's power to incur debt to anticipated taxes and reve-

nues, Congress left the Guam Legislature free to design the details of the territory's system for levying and collecting such taxes and revenues. Consequently, subject to the federal requirement of uniformity, local laws determine what types of property in Guam are taxed, how they are valued for taxation purposes, and what rates of taxation apply. In crafting the local tax structure, the Guam Legislature has opted to exempt certain types of real property from taxation, including government land, land used for educational or religious purposes, and land used in active farming. 11 Guam Code Ann. § 24401. The Department of Revenue and Taxation is required to appraise the taxable property on the island every three years, *id.* § 24306, and property is required to be appraised at its full market value, *id.* § 24102(f). The assessed or taxable value of real property subject to taxation is set at 35% of its appraised value. *Id.*

2. Origins Of The Present Dispute

For much of the 1990s, Guam's economy suffered a significant downturn. The territory's economy has long been driven principally by tourism (especially from Japan) and U.S. military spending. In the early 1990s, Japanese markets experienced massive declines, which significantly decreased Japanese investment and tourism in Guam. Military spending in Guam also declined. A series of other, unrelated events—a major earthquake in 1993, two supertyphoons in 1997 and 2002, the 1997 Asian economic crisis, the September 11, 2001, terrorist attacks, and the 2003 SARS epidemic—also contributed to the weakening of Guam's economy. *Cf.* JA 44a (Decl. of Felix P. Camacho in Support of Mot. to Expedite, ¶¶ 3-8). In combination, these events caused a substantial decline in the value of real property. One study, for example, calculates that the value of real property on Guam depreciated an average of 81% between 1990 and 2002. *See* W. Nicholas Captain, *Property Information: A Guam Case Study*, Real Estate Issues, Winter 2003, at 18.

In 2003 the Guam Legislature concluded that the territorial government had insufficient revenue in its General

Fund to pay certain obligations. Pet. App. 2a. On April 28, 2003, the Legislature passed Public Law 27-19, which authorized the Governor to issue bonds in an amount not to exceed $418,309,857. *Id.* The law earmarked $218,309,857 of the borrowing for General Fund expenditures, including tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding payments, general fund vendor payables, and public school repairs. *Id.*; 5 Guam Code Ann. § 1512(a), (m). The law specified that the remaining $200 million in borrowed funds were to be used to pay the debt service on bonds issued a decade earlier. Pet. App. 2a.

Before the Governor could enter into any contracts to issue bonds pursuant to Public Law 27-19, he was required to obtain approval of the contracts' legality from petitioner Attorney General. 5 Guam Code Ann. § 22601. On May 14, 2003, petitioner sent a letter to the Governor and the Speaker of the Legislature indicating that he would not approve any contract to issue bonds pursuant to Public Law 27-19. Pet. App. 3a. Petitioner determined that the borrowing would be illegal on two grounds.

First, the new borrowing would bring the territorial government's indebtedness above the level permitted by the debt-limitation proviso in Section 11 of the Organic Act. Petitioner explained that the phrase "aggregate tax valuation" in the proviso should be understood to refer to the assessed value of property used for purposes of taxation (which at present is fixed by law at 35% of appraised value) rather than the full, appraised value. Petitioner's view accorded with the position adopted several years earlier by the Legislative Counsel, the Legislature's own internal legal adviser. Pet. App. 8a; 2 Guam Code Ann. § 1112 (providing for Legislative Counsel).

Second, even if the Legislature were to rely on appraised value, petitioner opined, it was improper for the Legislature to use the 2002 tax roll to determine that value. Guam law requires a reappraisal of property values every three years, *see* 11 Guam Code Ann. § 24306, but the gov-

ernment had not carried out an appraisal since 1993, *see* Pet. App. 3a. Petitioner acknowledged that the territory's Board of Equalization had made some adjustments to the tax rolls in each of the intervening years, but he noted that property values had declined significantly since 1993 because of the island's major economic downturn and that the 2002 tax roll did not fully reflect this depreciation.

After a further exchange of letters, the Legislature responded on June 25, 2003, by enacting Public Law 27-21 in a post-hoc attempt to validate its earlier action. Pet. App. 3a. Public Law 27-21 expressed the Legislature's view that the phrase "aggregate tax valuation" in the Organic Act's debt-limitation provision should be understood to mean "one hundred percent (100%) of the appraised value of the property on Guam." *Id.* Public Law 27-21 also provided that when the territorial government fails to conduct the triennial appraisals otherwise required by law, the "last completed" appraisal, regardless of how old, "as supplemented by the annual adjustments" by the Board of Equalization, shall be the appraisal used for purposes of taxation. *Id.* at 9a. Because the Legislature's expression of its view concerning the meaning of the Organic Act had no legal significance, *see id.* at 10a, petitioner continued to decline approval of any contracts needed to undertake the borrowing authorized under Public Law 27-19.

3. Litigation In The Supreme Court Of Guam

On July 1, 2003, the Governor filed an original declaratory judgment action in the Supreme Court of Guam pursuant to 7 Guam Code Ann. § 4104, which permits the Governor to seek a binding determination of a question of law affecting the operation of the executive branch that is "a matter of great public interest [when] the normal process of law would cause undue delay." *See also In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 WL 187459 (Guam Feb. 7, 2002). The members of the Guam Supreme Court are appointed by the Governor with the advice and consent of the Legislature and serve ten-year terms. 7 Guam Code

Ann. §§ 3103(a), 6101(a). At the time that the Governor filed the declaratory judgment action, the Guam Supreme Court was established only pursuant to territorial law, so it could be abolished by the act of the legislative and executive branches and did not constitute a "coequal branch of government." H.R. Rep. No. 108-638, at 2 (2004), *reprinted in* 2005 U.S.C.C.A.N. 2208, 2209.[1]

The Governor asked the supreme court to determine whether the borrowing authorized by Public Law 27-19 violated the Organic Act's debt-limitation provision and whether the use of a tax roll unmoored to a recent appraisal as a means of calculating the debt limit was permissible. Pet. App. 3a-4a. The supreme court promptly invited petitioner to intervene. The day after the action was filed, July 2, the court held a "status hearing" at which petitioner contended that determining the propriety of reliance on the 2002 tax roll would require factfinding that the court did not appear to be in a position to undertake. The court fixed an expedited briefing schedule. The parties were required to file their opening briefs in five days, on July 7, their opposition briefs the next day, and their reply briefs the day after that at 10:00 a.m. JA 3a. The court heard oral argument on July 9, the same day it received the reply briefs. JA 7a.

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[1] The Guam Legislature originally created a Guam Supreme Court in 1974, but this Court ruled that the local statute establishing the court violated the Organic Act. *See Territory of Guam* v. *Olsen*, 431 U.S. 195, 203-204 (1977). In 1984 Congress responded to *Olsen* by amending the Organic Act to authorize the Guam Legislature to establish the Guam Supreme Court. 48 U.S.C. § 1424-1 (1984). The Guam legislature did not exercise the authority until 1992, however, and the Guam Supreme Court did not become functional until 1995. *See Haeuser* v. *Department of Law*, 368 F.3d 1091, 1094 n.5 (9th Cir. 2004); H.R. Rep. No. 107-584, at 3 (2002). In 2004 Congress itself authorized the Guam Supreme Court directly in the Organic Act in order to ensure its independence from the territorial government's political branches. In the same enactment, Congress provided for direct review of the Guam Supreme Court's decisions by this Court rather than by the Court of Appeals for the Ninth Circuit. *See* 48 U.S.C. §§ 1424-1, -2 (as amended 2004); *see also infra* pp. 12, 15 (discussing the change in appellate jurisdiction).

The supreme court issued its decision on July 23, concluding that the bonds authorized under Public Law 27-19 did not violate the Organic Act's debt-limitation provision. Pet. App. 2a. The court interpreted the phrase "aggregate tax valuation" as referring to full, appraised value rather than the assessed value used for purposes of taxation. Using as a starting point the fact that a similar debt-limitation provision in the Virgin Islands Organic Act used the phrase "aggregate assessed valuation" rather than "aggregate tax valuation," the court reasoned that if Congress had intended to refer to assessed value in the Guam Organic Act, it would have used the word "assessed" rather than "tax." *Id.* at 12a. Because the Organic Act did not require the Guam Legislature to limit the levy of property taxes to a certain percentage of actual or market value, the court took the view that "tax valuation" should be interpreted consistently with the "maximum grant of power to tax allowed by Congress." *Id.* at 15a. Accordingly, it concluded that "tax valuation" must mean "appraised value" because "all taxes on property must necessarily be based, in the first instance, upon appraised values of the property." *Id.* at 14a. The court never explained how this interpretation could be squared with its acknowledgment elsewhere in the opinion that tax-exempt property was valued in the appraisal process as well. *Id.* at 34a.

The court then considered the definition of "property" upon which the debt limitation is to be calculated under the Organic Act. Pet. App. 15a-19a. Despite having held that the debt-limit calculations should include the portion of market value that is exempted from tax assessment under current Guam law, the court nonetheless rejected respondent Governor's position that "property" includes property that is entirely exempt from taxation. *Id.* at 18a-19a. It would be unwise to calculate the debt limit based on non-taxed property, the court explained, because this property does not generate tax revenue. *Id.* The court acknowledged that its reasoning in interpreting the word "property" might be thought to be inconsistent with its analysis of the meaning of the phrase "aggregate tax valuation." *Id.* at 18a n.9.

The court next concluded that the government could use the 2002 tax roll to calculate the current debt limit, even though the government had not conducted the triennial appraisals mandated by Guam law to create the tax roll. Pet. App. 19a-26a. The court acknowledged that the territorial legislature's post-hoc effort in Public Law 27-21 to relax the triennial appraisal requirement by allowing reliance on tax rolls could have only prospective effect and so could not be used to support the legality of borrowing authorized before its enactment. *Id.* at 21a-22a. But the court nonetheless held that reliance on the 2002 tax roll was proper. The court determined that Guam law mandates triennial appraisals only for purposes of taxation, not for purposes of calculating the debt limit. *Id.* at 22a. The court placed the burden on petitioner to demonstrate that the system used to calculate the values in the tax roll through individual adjustments to the 1993 appraisal levels was arbitrary or capricious and found that petitioner had failed to carry that burden in the one week he had been given to present materials to the court. *Id.* at 25a-26a.

Finally, the court applied its interpretation of the meaning of the debt-limitation proviso to the particular facts of the 2003 borrowing bill and Guam's existing debts. According to the 2002 tax roll, the court found, the total appraised value of taxable property on Guam was $11.1493 billion. Pet. App. 34a. That meant the debt cap stood at $1.11493 billion. *Id.* The court found that the territorial government's existing "public indebtedness" was $378 million. *Id.* On this view, adding the $418,309,857 of debt authorized by Public Law 27-19 would bring the territory's debt to just below $800 million, well within the court's interpretation of the cap. *Id.* at 34a-35a.

Relying on the figures from the 2002 tax roll, petitioner's interpretation of the debt-limitation proviso would have meant a debt cap of $390.3 million, 35% of the $1.11493 billion ceiling calculated by the court. Thus, accepting the court's determination of existing public indebtedness at $378 million, some of the very first bonds issued under authoriza-

tion in Public Law 27-19 would have pushed the territorial government's indebtedness above the congressionally mandated limit.

4. Appellate Proceedings

Petitioner promptly sought review of the Guam Supreme Court's decision before the Court of Appeals for the Ninth Circuit, which at the time possessed jurisdiction to review Guam Supreme Court decisions by writ of certiorari. 48 U.S.C. § 1424-2 (2000) (Pet. App. 47a-48a). The Ninth Circuit granted the petition. Pet. App. 37a. In addition to questioning the Guam Supreme Court's definition of "aggregate tax valuation" in the Organic Act's debt-limitation provision, petitioner challenged the expedited process used by the Guam Supreme Court and its resort to factfinding. The parties submitted full briefing, and the court heard oral argument on May 6, 2004. JA 13a.

In October 2004 Congress amended 48 U.S.C. § 1424-2, to establish the Guam Supreme Court directly under the Organic Act and to shift certiorari jurisdiction over its decisions from the Ninth Circuit to this Court. Act of Oct. 30, 2004, Pub. L. No. 108-378, §§ 1-2, 118 Stat. 2206, 2208. But the Ninth Circuit only concluded that the amendment regarding appellate jurisdiction applied to pending cases in January 2006, *see Santos* v. *People of Guam*, 436 F.3d 1051 (9th Cir. 2006), and only dismissed the appeal in this case for lack of jurisdiction on that ground on March 6, 2006, Pet. App. 39a.

On May 24, 2006, petitioner requested an extension of time within which to file a petition for certiorari with this Court, which Justice Kennedy granted on May 31. The petition for a writ of certiorari was timely filed on July 19, 2006, and granted on September 26, 2006.

SUMMARY OF ARGUMENT

Petitioner has sought for more than three years to obtain appellate review by an Article III court of the Guam Supreme Court's decision. At the time of the Guam Supreme Court's ruling, the Court of Appeals for the Ninth

Circuit, not this Court, possessed exclusive jurisdiction to review judgments of the Guam Supreme Court by writ of certiorari. Petitioner's initial timely appeal to the Ninth Circuit was dismissed after full briefing and argument because the Ninth Circuit ultimately concluded that its jurisdiction had been eliminated by an intervening amendment to the Guam Organic Act. Petitioner then promptly filed a petition for writ of certiorari with this Court. Petitioner's timely certiorari petition to the Ninth Circuit and the Ninth Circuit's granting of that petition should be treated as having tolled the running of the time period for filing certiorari petitions with this Court because they effectively suspended the finality of the Guam Supreme Court's judgment. A contrary determination would penalize petitioner for diligently pursuing the avenues of appeal that were open to him and prevent review of the Guam Supreme Court's decision by any Article III court.

The Guam Supreme Court's decision should be reversed as contrary to the plain language and undisputed purposes of the Organic Act's debt-limitation provision. First, the Guam Supreme Court's equation of "aggregate tax valuation" with actual market value defies the plain language of the debt-limitation provision, which links the cap to anticipated revenues and tax receipts and to the assessed value of property used for taxation purposes. The court also misconstrued the significance of a similar debt-limitation provision in federal statutes concerning the Virgin Islands. Second, the court's holding thwarts the undisputed congressional purpose behind both debt-limitation provisions, which is "to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of taxpayers with those debts." *Guam Tel. Auth.* v. *Rivera*, 416 F. Supp. 283, 287 (D. Guam 1976).

ARGUMENT

I. THE PETITION FOR A WRIT OF CERTIORARI FROM THIS COURT WAS TIMELY FILED BECAUSE THE 90-DAY PERIOD FOR SEEKING REVIEW BY THIS COURT DID NOT BEGIN TO RUN UNTIL THE COURT OF APPEALS DISMISSED THE CASE

This Court has long recognized that the start of the 90-day period for filing a petition for writ of certiorari provided in 28 U.S.C. § 2101(c) is tolled if the petitioner or a court below takes an action that "raise[s] the question whether the court will modify the judgment and alter the parties' rights." *Hibbs* v. *Winn*, 542 U.S. 88, 98 (2004). Here, petitioner's timely filing of a certiorari petition with the court of appeals and that court's grant of certiorari had the effect of "'suspend[ing] the finality of the [Guam Supreme Court's] judgment, pending [the court of appeals'] further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.'" *Missouri* v. *Jenkins*, 495 U.S. 33, 46 (1990) (quoting *Department of Banking* v. *Pink*, 317 U.S. 264, 266 (1942)). Thus, petitioner's filing of a certiorari petition with the court of appeals and the court of appeals' granting of the petition should be treated as having the same effect that the filing of a petition for rehearing has on a decision of a court of appeals, namely of "suspend[ing]" the underlying judgment now sought to be reviewed. *Jenkins*, 495 U.S. at 46; *cf. Leishman* v. *Associated Wholesale Elec. Co.*, 318 U.S. 203, 205-206 (1943); *Pink*, 317 U.S. at 266. While the court of appeals, having properly granted certiorari, considered the case, "there [was] no 'judgment' to be reviewed" by this Court, *Jenkins*, 495 U.S. at 46, and the 90-day period established by 28 U.S.C. § 2101(c) should be considered to have been tolled.

A. This Court Lacked Jurisdiction To Review The Guam Supreme Court's Judgment When It Was Issued, When Petitioner Sought Certiorari Review By the Ninth Circuit, And When The Ninth Circuit Granted Review

The Supreme Court of Guam handed down its decision on July 23, 2003. At that time, the Guam Organic Act provided that "the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had." 48 U.S.C. § 1424-2 (2000). Petitioner timely filed a petition for a writ of certiorari with the Ninth Circuit on August 1, 2003, JA 11a, and the petition was granted on October 23, 2003, *id.*; Pet. App. 37a. Congress amended the Organic Act of Guam to give this Court rather than the Ninth Circuit direct review over Guam Supreme Court decisions on October 30, 2004. Pub. L. No. 108-378, § 2, 118 Stat. at 2208. But the writ of certiorari issued by the Ninth Circuit remained pending before that court until it determined that the amendment of the Organic Act applied to cases pending on its date of enactment, *see Santos* v. *People of Guam*, 436 F.3d 1051 (9th Cir. 2006), and so dismissed the appeal in this case for lack of jurisdiction on March 6, 2006. Thus, when the Guam Supreme Court issued its judgment, when petitioner sought a writ of certiorari from the Ninth Circuit, and when the Ninth Circuit granted the writ, the Ninth Circuit, not this Court, possessed exclusive jurisdiction to directly review decisions of the Guam Supreme Court. 48 U.S.C. § 1424-2 (2000); *see White* v. *Klitzkie*, 281 F.3d 920, 925 (9th Cir. 2002).

B. Petitioner's Filing Of A Certiorari Petition With The Ninth Circuit And The Ninth Circuit's Granting Of The Writ Suspended The Finality Of The Guam Supreme Court's Judgment And Thus Tolled The Limitations Period Under 28 U.S.C. § 2101(c)

The time for filing a petition for a writ of certiorari from this Court in a civil case is established by 28 U.S.C. § 2101(c),

which provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree," unless a Justice extends the deadline for up to sixty days "for good cause shown." As it has with respect to the other filing time limits enumerated in Section 2101, the Court has described Section 2101(c)'s deadline as "mandatory and jurisdictional," such that the Court has "no authority to extend the period for filing except as Congress permits." *Jenkins*, 495 U.S. at 45.[2]

This Court has long held, however, that actions that "'suspend the finality of the [lower court's] judgment,'" *Jenkins*, 495 U.S. at 46 (quoting *Pink*, 317 U.S. at 266), toll the running of the 90-day period. They do so because they "raise the question whether the court will modify the judgment and alter the parties' rights." *Hibbs*, 542 U.S. at 98. Because petitioner's filing of a petition for a writ of certiorari with the Ninth Circuit and the Ninth Circuit's grant of the petition raised exactly that question concerning petitioner's and respondent's rights, as determined by the Guam Supreme Court, those actions should be treated as tolling the 90-day period as well.

The post-judgment actions this Court has recognized as tolling the running of the 90-day period established in Section 2101(c) include: (i) a party's timely filing of a petition for rehearing or motion for reconsideration by the court or agency that issued the judgment or order that would be subject to review, *see, e.g.*, *Jenkins*, 495 U.S. at 47, 49; *FTC* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 209-

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[2] This Court's Rule 13.1 also provides that "[u]nless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment," but such rules are not jurisdictional. Rather, where such "court-created rules fail to anticipate unusual circumstances that fit securely within a federal statute's compass, the statute controls our decision." *Hibbs* v. *Winn*, 542 U.S. 88, 99 (2004).

210 (1952); *Pink*, 317 U.S. at 266; *Citizen's Bank* v. *Opperman*, 249 U.S. 448, 450 (1919) (predecessor of 28 U.S.C. § 2101(c)); *see also United States* v. *Healy*, 376 U.S. 75, 77-79 (1964) (criminal case; collecting earlier decisions from both criminal and civil cases); (ii) a lower court's appropriate decision to consider a late-filed rehearing petition, *Young* v. *Harper*, 520 U.S. 143, 147 n.1 (1997); and (iii) a lower court's *sua sponte* order recalling its mandate and directing the parties to brief whether the case should be reheard en banc, *Hibbs*, 542 U.S. at 97.[3] The Court has adopted the same rules in applying the parallel statutory sections in 28 U.S.C. § 2101(a) and (b) that set the time limits for seeking review by this Court of other particular types of judgments, time limits that the Court also considers jurisdictional. *See, e.g.*, *Communist Party of Indiana* v. *Whitcomb*, 414 U.S. 441, 445-46 (1974) (running of 28 U.S.C. § 2101(b) period tolled by timely rehearing petition); *FCC* v. *League of Women Voters of Cal.*, 468 U.S. 364, 373 n.10 (1984) (running of 28 U.S.C. § 2101(a) period would be tolled by timely motion for reconsideration of merits). Indeed, the Court has even held that where a party files a motion for a partial new trial, the start of the Section 2101 period is tolled with regard to issues not covered by the motion. *See Washington* v. *Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 150 (1980) (28 U.S.C. § 2101(b)). In cases concerning the 30-day time limit for filing notices of appeal for review in the courts of appeals fixed in 28 U.S.C. § 2107, which likewise has been held to be jurisdictional, *see, e.g.*, *Browder* v. *Director*, 434 U.S. 257, 264 (1978), the Court has adopted the same approach. *See Leishman*, 318 U.S. at 205 (motion to amend; predecessor of 28 U.S.C. § 2107); *Zimmern* v. *United States*, 298 U.S. 167, 169-70 (1936) (district court's *sua sponte* order

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[3] This Court's Rule 13.3 similarly provides that the running of the period to file a petition for writ of certiorari is tolled "if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing."

announcing intent to modify or amend its decree; predecessor of 28 U.S.C. § 2107); *Kingman* v. *Western Mfg. Co.*, 170 U.S. 675, 678, 680 (1898) (period tolled by filing of timely rehearing petition; predecessor of 28 U.S.C. § 2107); *Aspen Mining & Smelting Co.* v. *Billings*, 150 U.S. 31, 36-37 (1893) (same).[4]

While the actions suspending the finality of the judgment sought to be reviewed here are a petition seeking review of that judgment by a higher court and acceptance of review by the higher court rather than a petition for rehearing or similar action involving the court whose judgment is sought to be reviewed, the same principles should apply. In both circumstances, by the petitioner's action and the court's response, "[t]he final judgment already rendered was . . . challenged." *Pink*, 317 U.S. at 266. The finality of the Guam Supreme Court's judgment was therefore suspended because the filing of the petition for a writ of certiorari with the Ninth Circuit and the Ninth Circuit's granting of the petition opened the prospect that the "legal rights and obligations . . . settled" in the Guam Supreme Court's decision would be "disturbed or revised." *Minneapolis-Honeywell Regulator Co.*, 344 U.S. at 212. Because the Guam Supreme Court's judgment had been "deprived . . . of that finality which is essential to appealability," *Leishman*, 318 U.S. at 205, "there [was] no 'judgment' to be reviewed" by this Court, *Jenkins*, 495 U.S. at 46.

The situation presented here is analogous to cases in which an appellant or petitioner has sought discretionary review by a state high court before petitioning this Court for review of a substantial federal question. Because exhaustion is required before this Court's jurisdiction vests, this Court

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[4] For application of the same principle with regard to other filing deadlines, see, *e.g.*, *Bowman* v. *Lopereno*, 311 U.S. 262 (1940) (adjudication of untimely petition for rehearing tolls 30-day period for appeals in bankruptcy, 11 U.S.C. 48(a) (1934)); *United States* v. *Ellicott*, 223 U.S. 524 (1912) (filing of new trial motion tolls 90-day filing period for appeals from Court of Claims).

has recognized that the period for filing a petition does not begin to run until the state high court declines to exercise review or grants review and hands down its own judgment. In the context of statutes expanding or changing the character of this Court's jurisdiction in particular, the Court has followed the principle that a decision below only becomes final for purposes of triggering the limitations period for review by this Court once any discretionary review by lower courts has been completed. In *Andrews* v. *Virginian Railway Co.*, 248 U.S. 272 (1919), for example, this Court had to determine the effect of the 1916 statute that shifted the mode of this Court's jurisdiction to review certain judgments of state courts from writ of error to writ of certiorari (and that established a three-month filing limit for all petitions). The judgment of the trial court sought to be reviewed was handed down shortly before the jurisdiction-shifting statute took effect. But the order of the intermediate appellate court refusing discretionary review issued only after the statute had made certiorari review the only avenue for review by this Court. Because the losing plaintiff had sought review by writ of error, not certiorari, this Court dismissed the writ for want of jurisdiction, reasoning that "[u]ndoubtedly, before the action of the Court of Appeals, the judgment was not final and was susceptible of being reviewed and reversed by that court." *Id.* at 275.

The Court acknowledged that the intermediate appellate court's power of review (like the Ninth Circuit's here) was discretionary. But that did not affect the determination of finality for purposes of the time limits on this Court's review:

> It is true that under the law of Virginia, in a case like this the power of the Court of Appeals to review the judgment of the trial court was gracious or discretionary, and not imperative or obligatory; but the existence of the power, and not the considerations moving to its exercise, is the criterion by which to determine whether the judgment of the trial court was final at the time of its apparent date,

> or became so only from the date of the happening of the condition—the action of the Court of Appeals—which gave to that judgment its only possible character of finality for the purpose of review in this court.

248 U.S. at 275; *see Chicago Great W. R.R. Co.* v. *Basham*, 249 U.S. 164, 166-167 (1919) (state supreme court's consideration of second rehearing motion delayed finality until after jurisdiction-shifting statute took effect).

The suspending effect on the finality of the Guam Supreme Court's judgment of petitioner's Ninth Circuit petition and of the granting of that petition becomes particularly clear when one considers that, at the time the petition was filed and granted, the Ninth Circuit's power of discretionary review over Guam Supreme Court decisions resembled the power of discretionary review typically exercised by state supreme courts over state intermediate appellate courts. Like a state supreme court, the Ninth Circuit possessed the authority to review questions of local law as well as federal law. *See Gutierrez* v. *Pangelinan*, 276 F.3d 539, 546 (9th Cir. 2002); *EIE Guam Corp.* v. *Supreme Court of Guam*, 191 F.3d 1123, 1125 (9th Cir. 1999).[5] And like the judgments of a state supreme court reviewing decisions by a lower state court, the Ninth Circuit's judgments reviewing Guam Supreme Court decisions were subject to further review by this Court. This Court twice declined to exercise such jurisdiction. *See Gutierrez*, 276 F.3d 539 (9th Cir.), *cert. denied* 537 U.S. 825 (2002); *EIE Guam Corp.*, 191 F.3d 1123 (9th Cir. 1999), *cert. denied*, 528 U.S. 1137 (2000). The analogy between the Ninth Circuit's role and a state high court's is particularly apt in this case because the Guam Supreme

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[5] Indeed, Congress provided for Ninth Circuit review for up to 15 years after the creation of the Guam Supreme Court because it believed that "during the formative years of the new appellate court and while it establishes its institutional traditions, all decisions of that court should be reviewable by a court of appeals which is familiar with the local conditions." 130 Cong. Rec. 23790 (Aug. 10, 1984) (Sen. Weicker).

Court served as the court of first instance rather than an appellate court.

In the context of reviewing decisions from state courts subject to discretionary review by higher state courts, this Court has made clear that only once that discretionary review has been completed does the judgment below become final for purposes of determining the time limits for review by this Court. In *American Railway Express Co.* v. *Levee*, 263 U.S. 19 (1923), for instance, the Louisiana Supreme Court had declined to exercise its discretionary jurisdiction to issue a writ of certiorari to review a decision by the Louisiana Court of Appeals. The respondent challenged this Court's jurisdiction because the petition sought a writ of certiorari to the court of appeals rather than to the state supreme court. This Court rejected the challenge, noting that "although it was necessary for the petitioner to invoke [the Louisiana Supreme Court's] jurisdiction in order to make it certain that the case could go no farther, when the jurisdiction was declined the Court of Appeal was shown to be the highest Court of the State in which a decision could be had." *Id.* at 20-21 (citation omitted). Nonetheless, the Court observed, "the limit of time for applying to this Court was from the date when the writ of certiorari was refused." *Id.* at 21; *see also Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 160 (1954); *Cole* v. *Violette*, 319 U.S. 581, 582 (1943) (per curiam); *Mellon* v. *O'Neill*, 275 U.S. 212, 213 (1927); *Bacon* v. *Texas*, 163 U.S. 207, 215 (1896); *Fisher* v. *Carrico*, 122 U.S. 522, 525-526 (1887).

Just as this Court has treated discretionary review by a higher state court as suspending the finality of a lower court's decision for purposes of this Court's review of the underlying judgment, so here the exercise of discretionary review by the Ninth Circuit should be accorded the same finality-suspending effect.

C. The Ninth Circuit Properly Retained The Case To Determine Its Jurisdiction After The Organic Act Was Amended In 2004

When Congress amended the Organic Act in October 2004, petitioner's timely-sought appeal to the court of appeals had already been fully briefed and argued. *See* JA 13a. The Ninth Circuit acted properly in retaining jurisdiction to determine its own jurisdiction. *See, e.g.*, *Kircher* v. *Putnam Funds Trust*, 126 S. Ct. 2145, 2155 (2006) ("A federal court 'necessarily ha[s] jurisdiction to decide whether the case [is] properly before it'" (citation omitted)); *United States* v. *Ruiz*, 536 U.S. 622, 628 (2002) ("[I]t is familiar law that a federal court always has jurisdiction to determine its own jurisdiction."). It was only the Ninth Circuit's ultimate dismissal for lack of jurisdiction that determined that petitioner was no longer required to pursue his pending appeal before that court. That dismissal therefore rendered the Guam Supreme Court's judgment final for purposes of review by this Court and triggered the running of Section 2101(c)'s 90-day period for seeking certiorari review by this Court.[6]

D. Additional Considerations Also Support Interpreting Section 2101(c) As Permitting This Court To Exercise Jurisdiction

Three further considerations strongly support the conclusion that Congress intended this case to be subject to the Court's review.

First, this Court has recognized a presumption that Congress intends decisions of territorial courts to be subject to review by at least one Article III court. In *Territory of Guam* v. *Olsen*, 431 U.S. 195 (1977), the Court noted that "Congress has consistently provided for appellate review by Art. III courts of decisions of local courts of the other Terri-

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[6] Even if this Court is dissatisfied with the long time the Ninth Circuit took in resolving the jurisdictional issue and dismissing the case, the finality of the Guam Supreme Court's decision remained suspended during the pendency of the Ninth Circuit's review.

tories. What history there is points to a purpose to create a similar system for Guam." *Id.* at 203-204 (footnote omitted). Without a "clear signal from Congress . . . that it intended to allow . . . foreclos[ure] [of] appellate review by Art. III courts, including this Court, of decisions of territorial courts in cases that may turn on questions of federal law," *id.* at 202, this Court was "unwilling to say that Congress made an extraordinary exception in the case of Guam," *id.* at 204. Moreover, the Court noted, "we should hesitate to attribute such a purpose to Congress since a construction that denied Guam litigants access to Art. III courts for appellate review of local-court decisions might present constitutional questions." *Id.* The presumption that Congress intends territorial court decisions to be subject to review by Article III courts bolsters the conclusion that, when it amended the Guam Organic Act in 2004, Congress did not intend pending appeals to slip through the cracks and escape Article III review altogether.

Second, interpreting Section 2101(c) to bar the petition would deprive petitioner of access not only to an Article III court, but to *any* structurally independent court. When the Guam Supreme Court issued its decision, it did not constitute a fully independent and coequal branch of the Guam government because, unlike the territorial legislature and the executive branch, it had been established only pursuant to local statute, not federal law. Indeed, the Guam Legislature had attempted to interfere with the court's jurisdiction so frequently that the author of the Guam Supreme Court opinion in this case testified before Congress that "our island's judicial branch is marked not by independence but rather by political influence." *H.R. 521 & H.R. 791 Legislative Hearing Before the H. Comm. on Resources*, 107th Cong. 59 (2002) (statement of Acting Chief Justice F. Philip Carbullido).[7] Congress corrected this structural defect in

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[7] *See also* H.R. Rep. No. 107-584, at 9 (2002) (recounting various attempts by the Guam Legislature to interfere with the Guam Supreme Court's jurisdiction); 150 Cong. Rec. H7027 (Sept. 13, 2004) (Del. Bordallo

the same 2004 amendment of the Organic Act that switched jurisdiction over appeals from the Guam Supreme Court from the Ninth Circuit to this Court. Thus, given the Guam Supreme Court's lack of structural independence at the time it rendered the judgment sought to be reviewed, it is particularly important to give weight to the presumption in favor of Article III review this Court recognized nearly 30 years ago in *Olsen*.

Third, a rule that makes the petition untimely would create "a procedural pitfall, devoid of any sound supporting rationale," by penalizing petitioner for timely seeking appellate review in accordance with the Organic Act and for failing to "file a redundant slip of paper" with this Court (*i.e.*, a protective petition for writ of certiorari that would almost certainly have been dismissed as improper in light of 48 U.S.C § 1424-2). *Confederated Tribes of Colville Indian Reservation*, 447 U.S. at 150. Indeed, such a rule would create substantial uncertainty for litigants, thereby encouraging redundant and unnecessary protective filings that would pointlessly increase the workload for both parties and the Court. *Cf. Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 515 (1967) (statute of limitations on claims against the United States in 28 U.S.C. § 2401(a) does not mandate the filing of suit prior to administrative exhaustion because "protective suit[s] would be a sheer formality in any event—a procedural trap for the unwary and an additional complication for those who manage the dockets of the courts").

In short, there is no principled basis for denying the applicability of the rule of *Hibbs*, *Jenkins*, and this Court's long line of decisions concerning finality of state-court judgments subject to discretionary review to the admittedly idiosyncratic circumstances of this case. Petitioner at every turn sought review of the Guam Supreme Court's decision in a

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of Guam) ("[T]he current judicial structure . . . can be subject to manipulations based upon shifts in control of Guam's executive and legislative branches," since "the Guam legislature and the Guam executive branch have the power to abolish the Supreme Court of Guam . . . .").

timely manner, first by petitioning the court of appeals successfully and then by promptly filing a petition with this Court once the court of appeals dismissed the writ of certiorari it had previously granted to review the decision of the Guam Supreme Court. Neither 28 U.S.C. § 2101(c) nor common sense requires anything more.

II. THE GUAM SUPREME COURT'S DECISION UNDERMINES A CONGRESSIONALLY MANDATED RESTRICTION ON THE POWERS OF THE GUAM GOVERNMENT

The Guam Supreme Court's interpretation of the Organic Act's debt-limitation provision ignores the statute's plain language, misconstrues the significance of another territory's debt-limitation statute, and disregards Congress's central purpose of ensuring that Guam's territorial legislature and Governor remain democratically accountable for their fiscal policy decisions.

A. The Guam Supreme Court's Interpretation Conflicts With The Wording Of The Guam Organic Act

Interpretation of the debt-limitation provision must begin with the words of the provision themselves. *See, e.g., Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). The Guam Organic Act states that "when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam." 48 U.S.C. § 1423a.

Two features of this language are particularly important. First, public indebtedness may only be issued "when necessary to anticipate taxes and revenues." Thus, borrowing by the Guam Legislature is permissible only when the Legislature determines that the debt incurred can be retired from existing or reasonably anticipatable sources of tax revenue. *See, e.g., Hodges* v. *Crowley*, 57 N.E. 889, 892 (Ill. 1900); *cf. Wein* v. *State*, 347 N.E.2d 586, 591 (N.Y. 1976).

Second, the cap on overall indebtedness is set at 10% of the "aggregate *tax* valuation of the property" in the territory (emphasis added). Thus, although the Organic Act does not mandate a particular method of valuation—*i.e.*, whether taxes be levied on the full market value or on some lesser assessment value—this language again limits debts to those payable from existing resources, as determined by existing tax valuation requirements and methodologies.

Yet the Guam Supreme Court, by interpreting "aggregate tax valuation" to mean full market value, read the crucial modifier "tax" out of the debt-limitation provision. This not only severed the statutory link to anticipation of revenue and tax collections under the existing tax valuation structure, but also violated the well-established canon that whenever possible, courts must "construe a statute to give every word some operative effect." *Cooper Indus., Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 167 (2004). If Congress had intended the debt ceiling to be permanently and categorically tied to the full value of all property on Guam, it could simply have used the term "aggregate valuation," or even more simply, "aggregate value." Instead, Congress used the term "*tax* valuation," with the evident purpose of tying the level of permissible indebtedness to the valuation of property used for purposes of taxation—however that tax valuation system is structured by local officials. *Cf. Duncan* v. *Walker*, 533 U.S. 167, 169, 174-175 (2001) (holding that a statute referring to "State post-conviction or other collateral review" did not apply to federal habeas corpus review because reading the statute otherwise would render the modifying term "State" insignificant and thus fail to fulfill the Court's duty "to give effect, if possible, to every clause and word of a statute" (internal quotation marks omitted)).

As Congress would certainly have been aware, many jurisdictions set the value of property for purposes of taxation

considerably below the full market value.[8] That pattern was predictably followed in Guam itself. *See* 11 Guam Code Ann. § 24102(f) (defining "value" of real property for purposes of taxation as 35% of appraised value). Where a separate assessment level is set at something less than full market value, linking the permissible level of public indebtedness to the value of property used for imposing taxes has the clear effect of keeping the territorial government's borrowing in line with its ability and willingness to repay the debt through current and expected tax revenues.

The Guam Supreme Court's error is thrown into relief by state supreme court decisions interpreting debt-limitation provisions lacking a qualifier such as "tax" or "assessed" before the word "value" or "valuation." In construing these unqualified debt-limitation clauses, several state high courts have taken the absence of a qualifying adjective as a clear indication that full market value was intended. In *Board of Education* v. *Passey*, 246 P.2d 1078 (Utah 1952), for example, the Utah Supreme Court interpreted a constitutional debt ceiling that limited municipal borrowing to 4% of "'the value of the taxable property therein, the value to be ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness,'" *id.* at 1078 (citation omitted), where the state legislature had set the assessment rate at 40% of market value. The defendant school board clerk refused to sign bonds issued by the board, claiming that the amount of the bond issue exceeded 4% of the assessed value of the property in the municipality. The Utah Supreme Court rejected the clerk's view, reasoning that in the constitutional debt cap "[t]he word 'value' is not limited or qualified by any adjectives. It does not read 'assessed value' or specify any other particular kind of value. The word 'value' standing by itself can have only one meaning, viz. the full worth or actual value—not a fractional share

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[8] *See, e.g.*, Colo. Const. art. 10, § 3(b) (residential real property shall be valued for assessment at 21% of actual value); La. Const. art. 7, § 18(B) (setting assessed value at 10% of fair market value for land).

thereof." *Id.* at 1079. Other courts have followed the same sensible logic. *See N.W. Halsey & Co.* v. *City of Belle Plaine*, 104 N.W. 494, 495-497 (Iowa 1905); *State ex rel. Calles* v. *Board of Comm'rs*, 185 P. 456, 457 (Mont. 1919); *Hansen* v. *City of Hoquiam*, 163 P. 391, 392 (Wash. 1917); *see also C. B. Nash Co.* v. *City of Council Bluffs*, 174 F. 182, 184-185 (S.D. Iowa 1909).

Just as the absence of a qualifier before "valuation" indicates legislative intent to tie a debt restriction to market value, the presence of a qualifier such as "tax" (or "assessed") shows a legislative intent that the debt limit be tied to the value used for purposes of taxation, *i.e.*, the assessment value where state or territorial law provides that taxes may only be assessed on some fraction of market value. *Cf.*, *e.g.*, *Johanson* v. *Independent Sch. Dist. No. 23*, 73 N.W.2d 126, 129 (Minn. 1955) ("It is significant that the legislature saw fit to use the words 'in determining the assessed value.' It did not say 'in determining value' . . . .").

The suggestion that the Guam Supreme Court's opinion is saved because it construes the word "tax" to limit the types of property upon whose value the debt limit was to be calculated cannot survive scrutiny. *See* Pet. App. 17a-19a. If Congress had intended the word "tax" to qualify the meaning of "property" rather than defining the kind of valuation from which the debt limitation must be calculated, it could easily have made its intention clear by placing "taxable" before "property" rather than "tax" before "valuation." The use of the term "taxable property" in that way is common enough in state constitutional debt caps[9] and in fact appears in the Virgin Islands' debt-limitation provision enacted by Congress just a year before the Guam Organic Act. *See* 48 U.S.C. § 1403 (limiting that territory's indebtedness to 10% of the "aggregate assessed valuation of the taxable real

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[9] *See, e.g.*, Ga. Const. of 1983, art. IX, § V, ¶ I(a) ("The debt incurred by any . . . political subdivision of this state . . . shall never exceed 10 percent of the assessed value of all taxable property within such . . . subdivision . . . ."); Wyo. Const. of 1889, art. 16, § 5 (same).

property"). Although the Guam Supreme Court concluded that other wording differences between the two statutes were highly significant reflections of congressional intent, Pet. App. 12a (emphasizing the difference between "assessed" and "tax" valuation), it offered no explanation (or legislative history evidence) to support its overlooking of this difference or for the roundabout locution its interpretation would attribute to the Guam Organic Act's drafters.

Moreover, the court's reasoning that "it is imprudent to base the debt limit on non-taxed property because such property is not revenue generating" only underscores the problems with its interpretation of "tax valuation" to mean market value. Pet. App. 18a. Under the valuation system enacted by the Guam Legislature, some properties are entirely exempt from taxation and some properties are partially exempt in that taxes are not levied on 65% of their value. Either way, without direct legislative action to change the status quo, the exempted portions of the property "do[] not contribute to the general revenue of the government, and thus should not be used to determine the debt limit" under the Guam Supreme Court's own logic. *Id.* Indeed, such property does not contribute to "anticipate[d] taxes and revenues," since it is not part of the assessed value used for purposes of taxation. 48 U.S.C. § 1423a.

Thus, the plain language of the Organic Act demonstrates that Congress intended to cap the issuance of bonds by the Guam government at the amount "necessary to anticipate taxes and revenues," but in no event greater than 10% of the property valuation used to levy taxes. 48 U.S.C. § 1423a. While Congress left the decision on how to structure the tax valuation system to the Guam Legislature, using one valuation system to calculate current taxes and another to calculate the debt cap is clearly inconsistent with the Organic Act.

B. Comparison Of The Guam Debt-Limitation Provision With Other Territorial Debt Caps Confirms The Erroneousness Of The Guam Supreme Court's Interpretation

The Guam Supreme Court refused to interpret the qualifier "tax" as setting Guam's public borrowing ceiling with reference to the assessed value of property on Guam in significant part because the debt-limitation provision in the Virgin Islands' Organic Act includes the word "assessed" rather than "tax" before "valuation." *See* Pet. App. 12a. The Virgin Islands' provision was enacted just a year before Guam's, and the court reasoned that Congress would not have used the word "assessed" in one organic act and "tax" in the other if it had intended both terms to mean "assessed." *Id.* As the decisions by state supreme courts interpreting unqualified debt-limitation provisions suggest, however, the presence of either qualifier, whether "tax" or "assessed," is more significant than the particular qualifier chosen in demonstrating that the legislature intended to restrict borrowing by tying it to the valuation of property used for purposes of taxation rather than full or appraised value. *See supra* pp. 27-28. But, in any event, the Guam Supreme Court's comparison of the Guam and Virgin Islands provisions ignores the evolution of the Virgin Islands Organic Act. Once that evolution is taken into account, Congress' use of different qualifiers in the two organic acts only demonstrates their equivalence, not their divergence.

In 1949 Congress amended the Virgin Islands Organic Act to authorize the Virgin Islands government, for certain purposes, to issue bonds "*Provided*, That no public indebtedness . . . shall be incurred in excess of 10 per centum of the aggregate assessed valuation of the taxable real property in . . . the Virgin Islands." 48 U.S.C. § 1403; *see id.* § 1574(b)(ii)(A). But unlike the Guam debt cap, the Virgin Islands debt-limitation proviso was enacted against the backdrop of a 1936 federal statute governing property taxation in the Virgin Islands that contained a separate provision mandating that "all taxes on real property in the Virgin Is-

lands shall be computed on the basis of the actual value of such property." 48 U.S.C. § 1401a; *see Bluebeard's Castle, Inc.* v. *Government of the V.I.*, 321 F.3d 394, 396 (3d Cir. 2003).[10] Because of this separate pre-existing federal requirement, if the debt-limitation provision added to the Virgin Islands Act in 1949 had defined the limitation with reference to "aggregate tax valuation," that might well have been understood to mean actual value. Thus, in the Virgin Islands Act, it was necessary for Congress to insert the word "assessed" before "valuation" in the debt-limitation proviso in order to make clear that the debt ceiling was tied to the assessed value of property, not its full, appraised value. When Congress enacted the Guam Organic Act the following year, there was no similar need to use the word "assessed." The adjective "tax" could be used to achieve the same result.

A comparison between the debt-limitation provisions applicable to the Virgin Islands and Guam therefore does not emphasize the distinction between "tax" and "assessed" valuation, but rather demonstrates that Congress has consistently tied operation of the territories' debt-limitation provisions to their current systems for calculating property valuation for tax purposes, however those systems are structured.[11] This approach avoids undue infringement on

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[10] The provision states that "[f]or the calendar year 1936 and for all succeeding years all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property and the rate in each municipality of such islands shall be the same for all real property subject to taxation in such municipality whether or not such property is in cultivation and regardless of the use to which such property is put." 48 U.S.C. § 1401a. Congress established this requirement because prior to this time land in the Virgin Islands had been appraised for tax purposes at different rates based on the particular use of the land. *Bluebeard's Castle*, 321 F.3d at 401. Uncultivated land in particular had been taxed at a low rate, thus creating a disincentive to development of much land on the islands. *Id.*

[11] Indeed, the bill containing the Virgin Islands debt-limitation provision had originally used the phrase "aggregate tax valuation." The House committee that considered the bill amended the phrase to use the word "assessed" in response to a recommendation from the Department of

local prerogatives when, as in Guam, there is no particular reason for Congress to dictate territorial tax structure, while ensuring that territories compare apples to apples by evaluating the impact of new debt issues according to the same tax base and same valuation system that generates their current revenues.

Whatever the language used, two purposes remain constant across the statutes. *First*, Congress has sought to ensure that territorial governments' borrowing is not excessive. As noted in a committee report on the first general statute designed to limit territorial borrowing, the 1886 Springer Act, ch. 818, 24 Stat. 170 (July 30, 1886) (codified before repeal at 48 U.S.C. §§ 1471 *et seq.*), several existing territorial governments had incurred large debts and many of their counties and towns had incurred further obligations "much beyond the limits of prudence." S. Rep. No. 49-1327, at 1 (1886); *see also id.* at 3-12 (providing territory-by-territory reports). Congress has consistently acted to keep territorial governments within those limits of fiscal responsibility. *Second*, in order to mark those limits, Congress has placed caps on territorial indebtedness tied to territorial governments' current taxing systems. The Guam Organic Act's debt-limitation provision, properly interpreted rather than read as the Guam Supreme Court read it, fits neatly into this pattern.

C. The Guam Supreme Court's Interpretation Undermines Congressional Purposes In Enacting Debt-Limitation Provisions

The Guam Supreme Court's interpretation flies in the face not only of the Guam Organic Act's language and the legislative history of other territorial debt-limitation provisions, but also of the core purpose of such statutes: to keep borrowing within limits tied to legislators' willingness to im-

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the Interior. But the change was characterized as simply a "perfecting amendment," *i.e.*, one not designed to change the statute's intended meaning. H.R. Rep. No. 81-682, at 2, 3 (1949).

pose taxes on the people who elect them. By fixing that link in Guam's federal constitution, the debt-limitation proviso ensures that the Guam Legislature cannot engage in levels of borrowing that would threaten the territorial government's solvency. It prevents the Legislature from excessively postponing the enactment of taxes needed to keep the government within its means and thrusting upon future taxpayers oppressive levels of taxation. And, perhaps most fundamentally, the debt-limitation proviso thereby ensures that the members of the Legislature (and the Governor) remain accountable to people who elect them and whom they serve.

In these respects, the Guam Organic Act's borrowing cap resembles its state constitutional and statutory counterparts. As state supreme courts have repeatedly recognized, those state law limitations are intended "to prevent the creation of excessive municipal debt and to protect taxpayers from the consequent oppression of burdensome, if not ruinous, taxation." *City of Hartford* v. *Kirley*, 493 N.W.2d 45, 51 (Wis. 1992); *see* 15 McQuillin, *The Law of Municipal Corporations* § 41:1 (3d ed. 2005) (constitutional debt limits established "as a limit to taxation and as a protection to taxpayers; to maintain municipal solvency" (footnote omitted)). They serve "to prevent municipalities from loading the future with obligations to pay for things the present desires, but cannot justly afford, and, in short, to establish the principle that, beyond the defined limits, they must pay as they go." *Keller* v. *City of Scranton*, 49 A. 781, 782 (Pa. 1901); *see City of Hartford*, 493 N.W.2d at 51 ("seeks to impose the burden of debt repayment upon those who create the obligations, not upon future generations"); 15 McQuillin, § 41:1 (limits are designed "to prevent legislators from making future taxpayers pay today's bills"). They aim to restrain "the lust of a greedy and overindulgent . . . government." *Allen* v. *Van Buren Township*, 184 N.E.2d 25, 31 (Ind. 1962) (internal quotation marks omitted).

The Guam Supreme Court acknowledged these purposes, *see* Pet. App. 6a-7a, yet went on to disregard them in

concluding that "[b]ecause . . . Congress clearly granted the legislature the power to impose taxes on the full market value of property" it must "interpret the debt limitation . . . consistently with the maximum grant of power to tax allowed by Congress," *id.* at 15a. Such a bootstrapping analysis ignores the fact that debt-limitation provisions are designed to ensure political accountability in addition to solvency. Refusal to use existing taxation powers is in fact one of the central dangers that such provisions are designed to guard against, since legislatures can otherwise avoid accountability for their current spending choices by using long-term debt to shift payment burdens to future taxpayers. The Guam Supreme Court's interpretation only encourages such behavior by focusing on the maximum authority to tax rather than the current assessed value of property available to generate anticipated taxes and revenues.

Indeed, it is precisely because debt-limitation provisions are intended to be tied to taxation activities that state courts have generally construed them to be based on "the assessed value of the property for taxation, rather than the actual value, where the two are different," absent use of the term "actual value" in the proviso. 15 McQuillin § 41:7. As state courts have recognized, this ensures that apples are compared to apples because "adopt[ing] one test for borrowing and a very different test for the purpose of taxation even though each is based upon and limited to the *assessed value* of the taxable property . . . is merely an obvious attempt to circumvent [debt-limitation requirements] and double or triple the borrowing capacity of [defendants]." *Breslow* v. *School Dist.*, 182 A.2d 501, 504-505 (Penn. 1962); *see also, e.g., Johanson*, 73 N.W.2d at 128 (debt-limitation provision based on "assessed value" construed to refer to valuation for purposes of taxation rather than market value).

The Guam Supreme Court's interpretation precisely illustrates the point, since it leaves the territorial Legislature free to engage in much greater borrowing—with the present assessment rate of 35%, nearly three times as much borrowing—as would the interpretation urged by petitioner. And

the Guam Supreme Court's reading leaves the level of borrowing untethered to the very "anticipated taxes and revenues" that are the basis for any debt issuance and to the Legislature's general willingness to impose taxes on voters. It is telling in this regard that when the Legislature sought post hoc to validate the 2003 bond issue in the face of petitioner's objections, it enacted in effect an advisory law expressing its view that the phrase "aggregate tax valuation" in the debt-limitation proviso should be interpreted to mean 100% of appraised value—rather than raising the assessment rate in a way that would have made it immediately accountable to current taxpayers. *See* Pet. App. 3a. In evading responsibility for changing the assessment rate, the Guam Legislature was engaging in just the sort of behavior the debt ceiling was intended to prevent.

The purpose of Guam's federal debt-limitation provision, in short, is "to benefit the taxpayer by restraining the government's propensity to incur debts and to saddle future generations of taxpayers with those debts," thereby "promot[ing] fiscal responsibility." *Guam Tel. Auth.*, 416 F. Supp. at 287. To the extent the terms of the proviso are ambiguous, they should be read to serve that core congressional goal. Instead, the Guam Supreme Court's interpretation subverts it. By ensuring that the limitation Congress has imposed on a territorial government is properly understood and scrupulously observed, this Court will promote both the fiscal soundness of Guam's government and the accountability of that government to the U.S. citizens it serves.

CONCLUSION

For the reasons given above, the judgment of the Guam Supreme Court should be reversed.

Respectfully submitted,

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Supreme Court of the United States

DOUGLAS B. MOYLAN,
ATTORNEY GENERAL OF GUAM,

Petitioner

v.

FELIX P. CAMACHO, GOVERNOR OF GUAM

On Writ Of Certiorari
To The Supreme Court Of Guam

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QUESTIONS PRESENTED

1. Whether the time for filing a petition for writ of *certiorari* from this Court was tolled while a petition for writ of *certiorari* or writ of *certiorari* with respect to the same judgment was pending before the United States Court of Appeals for the Ninth Circuit.

2. Whether the Supreme Court of Guam erred in interpreting the phrase "aggregate tax valuation" in the Guam Organic Act's debt-limitation provision, 48 U.S.C. § 1424a, as tying the limit on borrowing by the Guam territorial government to the full value of property on Guam rather than to the assessed value used for purposes of taxation.

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INTRODUCTION

The Guam Supreme Court held that the debt limitation provision in the Guam Organic Act limits the Guam government's borrowing to 10 percent of the value of the taxable property on Guam. Petitioner disagrees and urges an interpretation that would limit government borrowing to 10 percent of assessed property values, which would substantially lower the limit and preclude additional government borrowing, in particular certain bonds that have been authorized by the Guam legislature and Governor in order to refinance decade-old debt at a lower rate and to pay other pre-existing government obligations.

Petitioner sought reversal of the Guam Supreme Court ruling in the Ninth Circuit. On October 30, 2004, however, when the case was awaiting opinion from the Ninth Circuit, Congress eliminated the Ninth Circuit's jurisdiction over decisions of the Guam Supreme Court. As of that date, the Ninth Circuit no longer possessed any authority to modify the judgment of the Guam Supreme Court or to alter the parties' rights. The Guam Supreme Court's judgment was then no longer reviewable by any court other than this Court so that a petition for a writ of *certiorari* to this Court was due within 90 days under 28 U.S.C. § 2101(c), *i.e.* January 28, 2005. Petitioner did not, however, obtain an extension of time for filing in this Court until May 2006, claiming timeliness because of a delayed jurisdictional dismissal from the Ninth Circuit. But this Court has made clear, on numerous occasions, that a lower court's deliberation as to its jurisdiction to resolve a case, after it has been divested of jurisdiction, does not extend the time for the filing of a petition for a writ of *certiorari* if the lower court concludes it lacks jurisdiction. Thus, this case should be dismissed for want of jurisdiction.

If the Court reaches the merits of the Guam Supreme Court's ruling, it should be affirmed. Congress enacted the Guam Organic Act to establish a democratic regime within the territory, by conferring United States citizenship and establishing a popularly elected legislature with broad

powers to govern local aspects of the territory, including the core governmental powers to tax and borrow, with few limitations. Congress has repeatedly reaffirmed the significance of self-governance in Guam, including by establishment of the popular election of the Governor and the independence of the Guam Supreme Court. The Guam Supreme Court's interpretation here is fully grounded in the language, purpose, and history of the statute, and is entitled to the same substantial deference that this Court has accorded other territorial courts that have construed federal laws of purely local application.

STATEMENT

A. Statutory and Factual Background

1. Section 11 of the Organic Act of Guam, 48 U.S.C. § 1423a, provides in relevant part that:

> [W]hen necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.

Congress enacted Section 11 in 1950 as part of the Organic Act's establishment of a civil government for the people of Guam, who at that point had been under the jurisdiction and control of the United States by virtue of the Treaty of Paris at the end of the Spanish-American War in 1898. *See* Treaty of Peace between the United States of America and the Kingdom of Spain, 30 Stat. 1754 (1898) (ratified Feb. 6, 1899). The Act bestowed United States citizenship on the people of Guam and empowered them to elect their own legislature for the first time. Pub. L. No. 81-630, 64 Stat. 384 (1950). In 1968, federal law established the popular election of the Governor of Guam as well. *See* Pub. L. No. 90-497, § 1, 82 Stat. 842 (1968).

In 1984, Congress amended the Guam Organic Act to authorize the establishment of a Guam Supreme Court, Pub. L. No. 98-454, tit. VIII, 98 Stat. 1742 (1984), which the Guam legislature created in 1992 and which began

functioning in 1996. *See Topasna v. Superior Court of Guam*, 1996 Guam 5, 1996 WL 870741, at *3 (1996). Congress initially provided that, for the first 15 years after the court's creation, the Ninth Circuit would maintain intermediate appellate oversight through petitions for *certiorari*. Pub. L. No. 98-454, tit. VIII, § 801, 98 Stat. 1732. In 2004, after eight years, however, Congress abolished that Ninth Circuit jurisdiction and established that the decisions of the Guam Supreme Court are subject to review only in the Supreme Court of the United States. *See* Pub. L. No. 108-378, § 2, 118 Stat. 2208 (2004).

2. On April 28, 2003, pursuant to the authority granted by Section 11 of the Guam Organic Act, the Guam legislature enacted Guam Pub. L. No. 27-19 to authorize the issuance of new bonds by the Guam government of up to $418,309,857. Pet. App. 2a. Nearly half of that amount is to refinance old debt incurred by prior Guam administrations, *i.e.*, $200 million is to "fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at matched maturity." *Ibid.* (quoting Guam Pub. L. No. 27-19, § 2 (2003)). The bonds thus would mean significant savings for the government of Guam through refinancing pre-existing obligations at a more favorable rate.

The other portion of the bond amount, $218,309,857, was aimed at meeting other pre-existing governmental obligations, and could be used "to pay income tax refunds, utility payments to the Guam Power Authority, retirement fund payments, withholding tax payments, general fund vendor payables, and public school repairs." *Ibid.* The need for these government funds resulted from the devastating impact on Guam of an unusual combination of major world events within a relatively short time period, *i.e.* the decline in the tourism industry on the Island due to the tragedy of September 11, 2001, particularly Japanese tourism which typically is very significant on Guam; a super-typhoon; the health crisis in parts of Asia due to SARS; and increased tensions with North Korea. Pet. App. 44a-48a. The need for the bonds to recover from that period remains but Guam is looking forward to increased economic prosperity

in the near future, including the substantial increase of United States military on the Island and the attendant infusion in the commerce of the local economy that will result. *See* First Hawaiian Bank, *Economic Forecast: Guam Outlook Brighter Than In Several Years* 1-2, 8-12 (2006-2007). Indeed, in anticipation of this future growth, Guam real estate values have attained pre-recession levels and are still rising. *Id.* at 10-11.

On April 28, 2003, the Governor of Guam signed the bond legislation into law. Pet. App. 2a. On May 14, 2003, however, petitioner, the Attorney General of Guam, notified the Speaker of the Guam Legislature and the Governor of his refusal to sign any contract for issuance of the bonds, a signature of approval that is required under 5 G.C.A. § 22601 for government contracts. Pet. App. 2a-3a.[1]

Petitioner claimed that the issuance of the bonds would violate the debt limitation of Section 11 of the Organic Act based on his unilateral conclusion that the Section 11 limit must be based on the *assessed* value of property on Guam and that the current tax list was inaccurate. *Id.* at 3a. By contrast, the Guam Legislature and Governor understand Section 11 not to impose such an unstated restriction on the borrowing power of the government and read it to allow calculation of Guam's debt-limit based on the full appraised value of taxable property on Guam.

B. Proceedings Below

1. On July 1, 2003, the Governor filed an action for a declaratory judgment in the Guam Supreme Court that the

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[1] Petitioner's authority not to approve a contract can be exercised only if the contract is illegal or not in the proper form. *See A.B. Won Pat Guam Int'l Airport Auth. v. Moylan*, 2005 Guam 5, 2005 WL 291577, at *4, *17-18, *cert. denied*, 126 S. Ct. 338 (2005) (statute prohibiting execution of contracts "without the approval of the Attorney General" permits Guam Attorney General to review contracts only "with respect to their legality and form" and imposes on the Attorney General "a legal duty," which can be enforced through mandamus, "to approve a contract which is lawful as to form and content").

authority to issue bonds under Guam Pub. L. No. 27-19 would not violate Section 11 of the Organic Act, and petitioner was permitted to intervene. Pet. App. 1a, 3a.

After briefing and oral argument, the Guam Supreme Court issued a lengthy published opinion, Pet. App. 1a-35a, and held that "the allowable public indebtedness under Section 11 is to be ascertained with reference to the appraised value of the property on Guam, as reflected on the certified tax roll in effect at the time the debt is incurred." *Id.* at 2a. As such, the court determined that the Guam government's issuance of the bonds authorized by Guam Public Law No. 27-19 would not violate Section 11. *Ibid.*

2. Under the federal law then in effect, as discussed above, petitioner timely filed a petition for intermediate review by the Ninth Circuit of the Guam Supreme Court judgment and the Ninth Circuit granted review on October 23, 2003. Pet. App. 37a. The parties briefed the case and presented oral argument before the panel in May 2004. J.A. 12a-13a.

On October 30, 2004, Congress enacted a statute to eliminate the Ninth Circuit's jurisdiction to review cases from the Guam Supreme Court, Pub. L. No. 108-378, § 2, 118 Stat. 2208 (2004). Petitioner did not file a petition for a writ of *certiorari* in this Court to review the Guam Supreme Court ruling within 90 days of that date.

The Ninth Circuit ultimately entered an order dismissing the instant case more than one year later, on March 6, 2006, and the mandate issued on March 28, 2006. J.A. 14a. Two months later, on May 24, 2006, petitioner filed an application for an extension of time for filing a *certiorari* petition in this Court, indicating that he intended to seek this Court's review of the Guam Supreme Court judgment over which the Ninth Circuit had lost jurisdiction on October 30, 2004. This Court granted an extension on May 31, 2006, pursuant to which petitioner filed on July 19, 2006 a petition in this Court for a writ of *certiorari* to the Guam Supreme Court. This Court granted *certiorari* on September 26, 2006, and posed the additional question presented regarding whether the Attorney General's *certiorari* petition in this Court was timely filed.

SUMMARY OF ARGUMENT

I.

A. The Court should dismiss this case for lack of jurisdiction because the petition for a writ of *certiorari* in this Court was not timely filed. The jurisdictional question posed by this Court when it granted *certiorari* in this case raises two different issues with regard to the running of the 90-day period for filing a *certiorari* petition in this Court. The parties agree that the time for filing a petition for a writ of *certiorari* in this Court to review the Guam Supreme Court was initially tolled while a petition for a writ of *certiorari* was pending before the Ninth Circuit. The parties also agree that Congress's enactment of Public Law No. 108-378 on October 30, 2004, eliminated the Ninth Circuit's jurisdiction over Guam Supreme Court decisions, such as this one, then awaiting decision in the Ninth Circuit. *See Santos v. Guam*, 436 F.3d 1051 (9th Cir. 2006).

The parties do not agree, however, that tolling continued *after* Congress eliminated the Ninth Circuit's jurisdiction over the case. This Court's precedents demonstrate that tolling ceased as of the date on which Congress eliminated the Ninth Circuit's jurisdiction because the Ninth Circuit no longer had any authority to "modify the judgment and alter the parties' rights." *Hibbs v. Winn*, 542 U.S. 88, 98 (2004). As such, petitioner was subject to the requirement of 28 U.S.C. § 2101(c) to seek review of the Guam Supreme Court's judgment within 90 days of that elimination of jurisdiction.

B. Petitioner is wrong that the time for filing a *certiorari* petition in this Court continued to be tolled until the date on which the Ninth Circuit exercised ancillary jurisdiction to issue an order dismissing the case for lack of jurisdiction. There are several analogous circumstances in which this Court has made clear that a lower court's resolution of whether it has or will exercise jurisdiction to resolve the merits of a case after that court already has been divested of jurisdiction over such a case does not extend the time for filing a petition for a writ of *certiorari* in this Court. If petitioner's contrary rule were to apply,

there would be no bar to dissatisfied litigants filing in the wrong court to extend proceedings, thus denying prevailing parties the repose that appellate time limits provide.

C. In any event, petitioner (who is the Attorney General of Guam) filed briefs in other cases in both the Ninth Circuit and in this Court, during the 90-day period for filing a *certiorari* petition in this case, that demonstrated that he understood that the Ninth Circuit was divested of jurisdiction over decisions from the Guam Supreme Court as of October 30, 2004.

Petitioner now urges this Court to extend its tolling doctrines because, he insinuates, the Guam Supreme Court is not sufficiently independent. Congress's elimination of the Ninth Circuit's jurisdiction over Guam Supreme Court decisions, however, reflected Congress's confidence that the Guam judiciary had been following the rule of law and had shown such a commitment so as to no longer need the additional intermediary review of the Ninth Circuit. Indeed, before petitioner lost in the Guam Supreme Court, he had been a champion of the review by that court, having urged the Governor and the Speaker of the Guam legislature to seek a declaratory judgment in that court to resolve this very case.

Petitioner had ample opportunity to preserve this Court's jurisdiction over the instant case. He could have filed a petition for a writ of *certiorari* within 90 days of Congress's elimination of the Ninth Circuit's jurisdiction on October 30, 2004. He also could have requested that the Ninth Circuit vacate the judgment and remand the case to the Guam Supreme Court so that it could re-enter its judgment and facilitate the filing of a timely *certiorari* petition to this Court, but petitioner made no such request in this case. Such relief is not available from this Court in this case at this time, however, because an *untimely* petition to this Court cannot empower it to facilitate the creation of an order that could have been timely reviewed in this Court.

II.

A. With respect to the merits, the Guam Supreme Court properly construed Section 11 of the Guam Organic Act to limit the Guam legislature to borrowing no more than 10 percent of the appraised value of taxable property on Guam. This interpretation tracks the language of Section 11, provides meaning to each statutory term, and neither omits nor adds meaning to any words of the statute. Had Congress, as petitioner argues, intended to limit the Guam legislature's borrowing power to 10 percent of the *assessed* valuation of the taxable property on Guam, Congress would have done so, as it had in other statutes limiting territorial borrowing authority to the "assessed valuation of the taxable real property." 48 U.S.C. § 1403.

The decision of the Guam Supreme Court also is well-supported on other grounds. Congress has imposed debt limitations in other circumstances without any reference to "assessed" valuation, and has interpreted such provisions to constitute a limitation based upon the "total value of the taxable property." Moreover, petitioner would have this Court ignore the well-settled canon of statutory construction that exceptions must be construed narrowly, the disregard of which is particularly incongruous where Congress has broadly conferred power to the people of Guam to govern their own affairs. *See City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731-732 (1995).

B. Even if this Court were to conclude, however, that ambiguity exists and the Guam Supreme Court's decision is but one of a number of possible constructions of the Act, the Court should defer to the Guam Supreme Court's interpretation here. This Court has repeatedly emphasized that the decisions of territorial courts on matters of purely local concern are entitled to great weight and should not be disturbed except in exceptional situations where egregious error has been committed. This deference extends to the interpretation of Acts of Congress directed toward the local jurisdiction, even though such laws fall within the Court's Article III jurisdiction. *Pernell v.*

Southall Realty, 416 U.S. 363 (1974); *Santa Fe Central Ry. Co. v. Friday*, 232 U.S. 694 (1914).

C. None of petitioner's arguments defeats the deference that the Guam Supreme Court is due. Petitioner's claim that public indebtedness of Guam must be strictly limited "to anticipated taxes and revenues" falters because there is no congressional mandate that borrowing be limited to pre-existing streams of revenue. Had Congress intended such a result, it would have said so, as it had on other occasions. Equally erroneous is petitioner's reliance upon state court constructions of inapposite state constitutional debt limitations. Petitioner demonstrates no more than the obvious: that when a State limits municipal indebtedness to a percentage of assessed property values it expressly says so in the governing law. But petitioner proffers no state constitutional provision analogous to the language at issue here, and certainly no state case imposing a debt limitation that appears nowhere in the state constitution or statute.

Finally, petitioner's public policy arguments, which lack any basis in the text of the statute, must be dismissed. Contrary to petitioner's claims, the borrowing at issue will not overburden future generations. Not only does petitioner overlook the numerous streams of revenue Congress empowered the Guam legislature to obtain, but petitioner ignores the fact that the bonds at issue will refinance the debts of prior administrations at more favorable interest rates and will primarily meet pre-existing governmental obligations.

ARGUMENT

I. THIS COURT IS WITHOUT JURISDICTION BECAUSE THE *CERTIORARI* PETITION IN THIS COURT WAS UNTIMELY

A. Congress's Elimination Of The Ninth Circuit's Jurisdiction Terminated Its Jurisdiction Over This Case As Of The Effective Date Of The Legislation And Triggered The 90-day Period For Seeking Review From This Court

1. A petition for a writ of *certiorari* for review by this Court in a civil case must be filed within 90 days after entry of the judgment or decree in the "civil action, suit or proceeding." 28 U.S.C. § 2101(c). Petitioner does not dispute (Pet. Br. 16) that the "90-day limit is mandatory and jurisdictional." *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 90 (1994) (quoting *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990)). "No exceptions or waivers are recognized; no matter how extenuating the circumstances, an untimely petition will not be entertained." Robert L. Stern, Eugene Gressman, *et al.*, *Supreme Court Practice* 349 (8th ed. 2002).

The jurisdictional question posed by this Court when it granted *certiorari* in this case raises two different issues with regard to the running of that filing period. The parties agree that the time for filing a petition for a writ of *certiorari* in this Court was tolled while the petition for a writ of *certiorari* was pending before the Ninth Circuit. *See, e.g., Andrews v. Virginian Ry. Co.*, 248 U.S. 272 (1919) (the time for petitioning this Court for *certiorari* to review the judgment of a state intermediate court is tolled while discretionary review is sought from a higher court in that same state court system).[2]

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[2] We use the term "tolling" here to refer to the point in time when the filing period "began to run," *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991), which is not so much "a matter of tolling" in the typical sense because the 90-day period for seeking *certiorari* in this Court restarts in full following review by an intermediate appellate court that has authority to "modify the judgment and alter the parties' rights." *Hibbs*,

(Continued on following page)

But the parties do not agree that that tolling continued after Congress eliminated the Ninth Circuit's jurisdiction over the case. This Court's precedents demonstrate that the tolling ceased as of the date on which the Ninth Circuit was divested of jurisdiction because the Ninth Circuit no longer had jurisdiction to "modify the judgment and alter the parties' rights." *Hibbs v. Winn*, 542 U.S. at 98. Petitioner is therefore wrong in his claim that the period continued to be tolled thereafter, up until the time the Ninth Circuit issued an order dismissing the case for lack of jurisdiction.

2. The Guam Supreme Court entered judgment in this case on July 23, 2003. At that time, federal law provided that decisions of the Guam courts generally would be "governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States." Pub. L. No. 98-454, tit. VIII, § 801, 98

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542 U.S. at 98; *cf. Missouri v. Jenkins*, 495 U.S. 33, 46 (1990) (timely request to intermediate appellate court to exercise its authority to reconsider and alter its decision "suspend[s] the finality" of the judgment sought to be reviewed pending disposition of that request).

Under a typical tolling doctrine, by contrast, a filing period does not restart in full. Rather, "whatever time ran before the clock was stopped" is subtracted from the full period to determine the amount of time remaining for filing. *Ibarra*, 502 U.S. at 4 n.2. Under that scenario, the *certiorari* petition to this Court was untimely even if petitioner were correct that tolling continued until entry of the Ninth Circuit order dismissing the case on March 6, 2006. Eight days had elapsed between the Guam Supreme Court's judgment and petitioner's invocation of the Ninth Circuit's jurisdiction, so that only 82 days of the 90-day filing period in this Court remained, which made the *certiorari* petition due in this Court on May 27, 2006 (a Saturday). Petitioner did not obtain an extension of time until May 31, 2006 (the following Wednesday), to file the petition in July 2006. S. Ct. Docket, No. 06-116. This Court's order granting an extension after the date for filing already has passed does not render a petition timely. *See FEC*, 513 U.S. at 98-99 (holding that "the Solicitor General's 'after-the-fact' authorization does not relate back to the date of the FEC's unauthorized filing so as to make it timely" because "[s]uch a practice would result in the blurring of the jurisdictional deadline"); *see, e.g., Northwest Airlines, Inc. v. Spirit Airlines, Inc.*, 127 S. Ct. 340 (2006) (No. 06-M-7) (motion to direct the Clerk to file a petition for writ of *certiorari* out of time denied).

Stat. 1742 (1984) (codified at 48 U.S.C. § 1424-2). Congress had made one exception to that rule. It provided that "for the first fifteen years" following establishment of the Guam Supreme Court, "the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of *certiorari* all final decisions of the highest court of Guam from which a decision could be had." *Ibid.* Pursuant to this provision, petitioner sought a writ of *certiorari* from the Ninth Circuit on October 1, 2003 to review the Guam Supreme Court decision, which was granted on October 23, 2003.

Congress, however, eliminated the Ninth Circuit's Public Law 98-454 jurisdiction over Guam Supreme Court judgments on October 30, 2004, before the Ninth Circuit issued any decision on the merits in this case. *See* Pub. L. No. 108-378, § 2, 118 Stat. 2208. Petitioner does not dispute that, as the Ninth Circuit correctly determined in *Santos v. Guam*, 436 F.3d 1051, Congress eliminated the Ninth Circuit's jurisdiction over Guam Supreme Court decisions, such as this one, in which it had granted review but had not yet issued a decision at the time the law became effective. Pet. App. 39a. *See also* Pet. Mot. for Extension of Time, at 2 (filed May 24, 2006) (noting that "Congress divested the Ninth Circuit Court of Appeals of jurisdiction of this appeal after the Ninth Circuit had taken this case under advisement but before the Ninth Circuit rendered it's [sic] decision.").[3]

As of that divestiture of Ninth Circuit jurisdiction on October 30, 2004, the Guam Supreme Court's judgment was no longer subject to review by any court that had jurisdiction to alter that judgment, other than this Court.

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[3] Other litigants, involved in decisions from the highest court of the Commonwealth of the Northern Mariana Islands, sought review of a Ninth Circuit ruling that relied on *Santos* to hold that the expiration of Ninth Circuit jurisdiction by force of another law (48 U.S.C. § 1824) applied to cases then pending before that court of appeals. This Court denied review of those Ninth Circuit decisions. *See Oden v. Northern Marianas College*, 440 F.3d 1085 (9th Cir.), *cert. denied*, 127 S. Ct. 108 (2006) (No. 05-1545); *Roberto v. Fejeran*, No. 04-72996 (9th Cir. Apr. 25), *cert. denied*, 127 S. Ct. 257 (2006) (No. 06-115).

Therefore, the period during which the Attorney General was required to file a petition for a writ of *certiorari* to this Court commenced on that date. Just as "the filing of a timely petition for rehearing defers the finality necessary for Supreme Court review until the petition is denied, the judgment is modified, or the power to act upon the petition expires," Stern & Gressman, *supra*, at 161, the granting of review by the Ninth Circuit deferred finality of the Guam Supreme Court only until the Ninth Circuit's power to act on the merits of the case was eliminated.

Indeed, the divestiture of Ninth Circuit jurisdiction is an even more significant triggering act for running of the 90-day period for seeking *certiorari* review in this Court than is denial of an initial rehearing petition, because in the latter circumstance, a court retains inherent authority to address the merits through a *sua sponte* rehearing, but no such discretion remains over the merits in the absence of jurisdiction.

Accordingly, petitioner's filing of his *certiorari* petition in this Court more than one year after Congress's elimination of the Ninth Circuit jurisdiction was out of time. After October 30, 2004, the Guam Supreme Court's judgment was no longer the subject of review by a court that could "modify the judgment and alter the parties' rights." *Hibbs*, 542 U.S. at 98. As such, petitioner was subject to the requirement of 28 U.S.C. § 2101(c) to seek review of the Guam Supreme Court's judgment within 90 days of that elimination of Ninth Circuit jurisdiction. The absence of Ninth Circuit jurisdiction to alter the judgment meant that it was subject to review by this Court. *Cf. Market Street Ry. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 552 (1945).

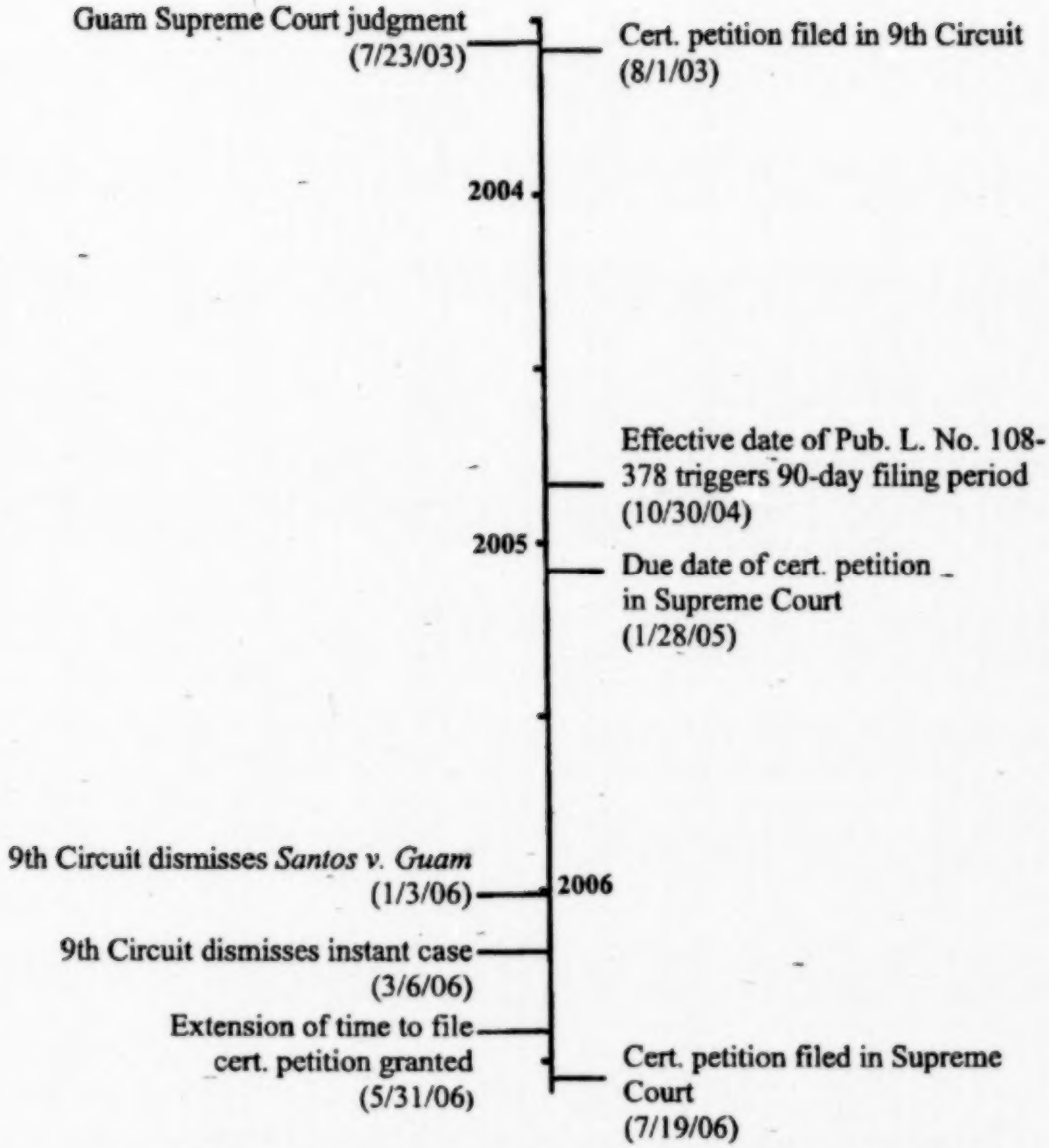
B. The Ninth Circuit's Delayed Order Dismissing The Case Did Not Extend The Time For Seeking This Court's Review Of The Guam Supreme Court Judgment

1. Petitioner contends (Pet. Br. 22) that it was the order of the Ninth Circuit dismissing the case for lack of jurisdiction that "determined that petitioner was no longer

required to pursue his pending appeal before that court" and "triggered the running of Section 2101(c)'s 90-day period for seeking *certiorari* review by this Court." Petitioner asserts that he was precluded from seeking review of the Guam Supreme Court judgment earlier because the Guam Supreme Court judgment somehow was not final until the Ninth Circuit order. Pet. Br. 22 n.6.

Petitioner's argument is without merit because it would allow the delay of an appellate order to repeal a jurisdictional enactment by Congress. The cases on which petitioner relies do not support his argument because, in all of those circumstances, the lower courts maintained jurisdiction to adjudicate the case through a petition for rehearing or a motion for a new trial, something that the Ninth Circuit unquestionably lacked here.

The Ninth Circuit's exercise of ancillary jurisdiction to issue a jurisdictional order of dismissal in this case did not extend the 90-day period for seeking review in this Court of the Guam Supreme Court's judgment. Contrary to petitioner's claim, there was no longer any suspension of finality of the Guam Supreme Court judgment for the reasons discussed further below. Indeed, if petitioner's contrary rule were to apply, there would be no bar to dissatisfied litigants filing in the wrong court to extend proceedings and waiting for that court to declare its lack of jurisdiction before seeking further review from this Court. That would deny prevailing parties the repose that appellate time limits are intended to provide. *See Matton Steamboard Co. v. Murphy*, 319 U.S. 412, 415 (1943); *FEC*, 513 U.S. at 99. Indeed, in this case petitioner seeks to obtain an additional year of tolling, as consideration of the relevant dates demonstrates in the following timeline:



2. There are several analogous circumstances in which this Court has made clear that a lower court's resolution of its jurisdiction to resolve the merits of a case after that court already has been divested of jurisdiction over the case does not extend the time for filing a petition for a writ of *certiorari* in this Court if the lower court determines, as the Ninth Circuit did here, that it lacks jurisdiction.

a. *Petition For Rehearing Denied By Operation Of Statute.* In some jurisdictions, state law mandates denial of a rehearing petition upon expiration of a set period of time if the state appellate court has not acted on the petition by that date. In such cases, the time for seeking *certiorari* review in

this Court runs from the date prescribed by law for denial of rehearing, regardless of the date, if any, on which the court ultimately enters its order of denial of rehearing. "A timely petition for rehearing defers finality for [this Court's] purposes until it is acted upon or *until power to act upon it has expired* as here it would appear [by law] to do at the end of the 30-day period." *Market Street Ry. v. Railroad Comm'n of Cal.*, 324 U.S. at 552 (emphasis added). The party who sought rehearing cannot delay seeking review in this Court until it receives a further order of the appellate court. It must file a petition for a writ of *certiorari* within 90 days of the date on which rehearing is denied as a matter of law.

b. *Request For Post-Judgment Relief From A Court That Lacks Power To Grant It.* This Court has held that a state supreme court ruling that that court lacked authority to grant a post-judgment motion did not restart the time for filing a petition for *certiorari* review in this Court, but rather the time ran during the pendency of the post-judgment motion.

In *Isenberg v. Sherman*, 286 U.S. 547 (1932), after the California Supreme Court had denied a petition for rehearing and sent its mandate to the lower court, a party filed a motion to recall the mandate on the ground that the state court's judgment had been granted through mistake of fact, false suggestion, and fraud. Five months later, the California Supreme Court denied the motion because it concluded that the "case must be treated as having been determined finally and no longer within the jurisdiction of this court." *Isenberg v. Sherman*, 7 P.2d 1006, 1010 (Cal. 1932). The party filed a petition for *certiorari* in this Court that was timely if calculated from the date of that last order by the appellate court but not, if calculated from the date of the initial rehearing denial. *See* Reynolds Robertson & Francis R. Kirkham, *Jurisdiction of the Supreme Court of the United States* § 384, at 772-773 (Richard F. Wolfson & Philip B. Kurland eds. 2d ed. 1951). But this Court denied the petition because "the application for writ of *certiorari* was not made within the time provided by law." 286 U.S. at 547.

c. *Request For Leave To File A Second Petition For Rehearing.* When a party seeks leave to file a second petition for rehearing in a court of appeals, the application requesting such leave does not alter the fact that the time for filing a petition for *certiorari* for review by this Court continues to run, unless the court grants the motion for leave to file the petition. *See Morse v. United States*, 270 U.S. 151, 154 (1926); *Chicago Great Western R. Co. v. Basham*, 249 U.S. 164 (1919). A party who seeks leave to file a second rehearing petition cannot delay seeking review in this Court until it receives a further order of the appellate court denying that request. It must file a petition for a writ of *certiorari* within 90 days of the date on which the court of appeals acted on the initial rehearing request pursuant to this Court's Rule 13.3.[4]

During the pendency of a request for leave to file a second rehearing motion, the party does not, of course, know whether the motion will be granted. Thus, the party cannot know whether the time for petitioning for *certiorari* review in this Court of the judgment will be suspended by a grant of such leave. But it is clear that such uncertainty does not allow the party to wait to learn what the court of appeals decides. Rather, that party must file for *certiorari* in this Court based on the divestment of the court of appeals' jurisdiction that results from the action on the initial rehearing request. This is so even though if the court of appeals ultimately grants leave to seek a second rehearing, the *certiorari* petition will be subject to withdrawal or dismissal as premature.

For example, in *Gypsy Oil Co. v. Escoe*, 275 U.S. 498 (1927), a party's first petition for rehearing in a state appellate court was denied. It sought leave to file a second

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[4] This Court's Rule 13.3 which defines the point at which the time to file a petition for writ of *certiorari* begins to run, is based on the Court's "traditional and virtually unquestioned practice" under Section 2101(c) and its predecessors and analogues. *United States v. Dieter*, 429 U.S. 6, 8 n.3 (1976); *see, e.g., Jenkins*, 495 U.S. at 46 (citing *Department of Banking v. Pink*, 317 U.S. 264, 266 (1942)).

petition for rehearing in the state appellate court. Although that application initially was endorsed "granted," the state appellate court entered a formal order almost two months later denying leave to file the second rehearing petition. The party then filed a petition for a writ of *certiorari* in this Court. The *certiorari* petition was out-of-time if the time for filing was calculated from the denial of the first petition for rehearing, but timely if calculated from the denial of leave to file the second petition.

This Court held that the *certiorari* petition was untimely because "further suspension [of the time] cannot be obtained by the mere presentation of a motion for leave to file a second petition for rehearing." *Id.* at 499; *see Jurisdiction of the Supreme Court*, *supra*, § 43, at 76 (time not tolled "[for] second petition for rehearing which the highest state court has denied leave to file," citing *Clark v. Alabama*, 311 U.S. 688 (1940)); *see also id.* § 384, at 769 ("the period in which to apply to the Supreme Court" is not tolled "by a petition for rehearing *subsequently* stricken as violating the rules of the state court," citing *Doss v. Illinois*, 320 U.S. 762 (1943)).

d. *Seeking Leave To File Untimely Petition For Rehearing.* This Court has also held that an untimely petition for rehearing does not toll the time for filing a petition for *certiorari* in this Court unless the lower court subsequently grants leave to file the out-of-time petition.

In *Pfister v. Northern Illinois Finance Corp.*, 317 U.S. 144 (1942), a party argued that its motion to file an out-of-time petition for rehearing in the court of appeals should have tolled the time to seek *certiorari* review in this Court on the theory that, while the court was considering the out-of-time rehearing petition, the underlying order was no longer final. This Court rejected the argument that a court's "consideration of the reasons for allowing a rehearing out of time which are brought forward by the petition for rehearing [was] sufficient to resurrect the original order," even when "examination of the grounds of the petition for rehearing is equivalent to a reexamination of this basis of the original decree." *Id.* at 150. Instead, the

Court concluded that "examination of the grounds for allowing a rehearing does not enlarge the time for review of the original order" unless it is clear that the court "refus[ed] to modify the original order" and did not simply "refus[e] to allow the petition for rehearing." *Id.* at 150-151; *see also Bernards v. Johnson*, 314 U.S. 19, 31 (1941) ("An order denying a petition for rehearing or review which is dismissed because the petition was filed out of time, without reconsideration of the merits, does not extend the time for appeal from the original order."). *Compare Young v. Harper*, 520 U.S. 143, 147 n.1 (1997) (holding time for seeking *certiorari* was tolled when court of appeals exercised its authority to permit a petitioner to file a late petition for rehearing).

Thus, as this Court explained in a case in which an application for rehearing (apparently analogous to a Federal Rule of Civil Procedure 60(b) motion) was filed in a bankruptcy court *after* the time for appealing to the circuit court had passed: "A defeated party who applies for a rehearing and does not appeal from the judgment or decree within the time limited for so doing, takes the risk that he may lose his right of appeal, as the application for rehearing, if the court refuse to entertain it, does not extend the time for appeal." *Wayne United Gas Co. v. Owens-Illinois Glass Co.*, 300 U.S. 131, 137 (1937).[5]

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[5] A similar body of law exists to determine whether a petitioner has complied with the requirement in 28 U.S.C. § 1257(a) and its predecessors that state court judgments must be "rendered by the highest court of a State in which review could be had" before *certiorari* can be sought to this Court. This Court has consistently held it is not enough for a person aggrieved by an intermediate state court to show this Court that there was no case law interpreting whether a higher state appellate court had jurisdiction at the point in time at which he sought further review from this Court. Thus, in *Gotthilf v. Sills*, 375 U.S. 79 (1963), a party appealed a judgment from an intermediate New York appellate court to New York's Court of Appeals, but his appeal was dismissed by that court because that court determined that it lacked jurisdiction because the judgment was not final under state law. This Court ultimately dismissed the case on the ground that the party was not seeking review of a judgment rendered by the highest state court in

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The circumstances of the instant case are directly analogous to these prior precedents. Once Congress eliminated the Ninth Circuit's jurisdiction to alter the Guam Supreme Court's judgment in this case, the Guam Supreme Court order was subject to review in this Court and the 90-day time under Section 2101(c) for filing a *certiorari* petition commenced. The delay in the Ninth Circuit subsequently entering an order of dismissal for want of jurisdiction did not extend the time for filing.

C. Petitioner Had Actual Knowledge That The Ninth Circuit Had No Jurisdiction After October 30, 2004, And He Had Ample Means To Protect His Ability To File A Timely *Certiorari* Petition In This Court

Petitioner suggests (Pet. Br. 22) that, until the Ninth Circuit entered its order of dismissal for lack of jurisdiction in this case, he was uncertain whether Congress had divested that court of jurisdiction and thus tolling should be deemed to continue until that date. As just demonstrated, however, this Court's decisions have long contemplated that a party may not know until after a lower court issues a ruling whether the time for seeking *certiorari* review in this Court is running or has been tolled.

In any event, adoption of a contrary rule in the instant case would not benefit petitioner because there is no basis for tolling inasmuch as petitioner not only had

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which review could be had because, in this Court's judgment, petitioner could have sought review from the state Court of Appeals through a different procedural means. *Id.* at 80. This was so even though, as the dissenters noted, the question of state appellate jurisdictional law was a novel one at the time the case was in the state court system. *Id.* at 82 (Douglas, J., dissenting) ("The determination of the Court of Appeals * * * came as a surprise."); *see also, e.g., Fisher v. Perkins*, 122 U.S. 522, 525 (1887) (holding that newly enacted Kentucky law governing appeals permitted further review in state court system and thus petitioner had not established "affirmatively on the face of the record that a decision in this suit could not have been had" in a higher state court).

actual knowledge of the Ninth Circuit's lack of jurisdiction as of October 30, 2004, he also represented in filings in other cases in both that court and this Court during the relevant time period that jurisdiction had been eliminated by Congress as of that date. Petitioner was fully aware of his opportunity to seek further review by this Court during that period and there is no basis for excusing his failure to do so.

1. Petitioner acknowledged in court filings, during the 90-day *certiorari* filing period, that the Ninth Circuit's jurisdiction over Guam Supreme Court decisions had been eliminated on October 30, 2004

Petitioner, who is the Attorney General of Guam, filed briefs in both the Ninth Circuit and in this Court that demonstrated that he understood that the Ninth Circuit was divested of jurisdiction over decisions from the Guam Supreme Court as of October 30, 2004, the effective date of Public Law 108-378. Yet, petitioner took no steps for more than a year thereafter to file a *certiorari* petition in this Court in this case. Under the circumstances, petitioner cannot colorably claim that he "has been pursuing his rights diligently." *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (standard for equitable tolling).

Petitioner was counsel for respondent in *Santos v. Guam*, 436 F.3d 1051, the only other case from the Guam Supreme Court that appears to have been awaiting decision in the Ninth Circuit on October 30, 2004, when Congress divested that court of jurisdiction to review Guam Supreme Court decisions. After enactment of Public Law 108-378, the parties briefed the jurisdictional question in the *Santos* case and petitioner was aware that that ruling would govern the instant case as well because the Ninth Circuit entered an order on December 15, 2004, to that effect. Pet. App. 49a.

In his jurisdictional brief filed in the *Santos* case on December 27, 2004, petitioner proffered two alternative

views of the effect of the law. Petitioner's primary contention was that:

> under the holding of *Bruner v. United States*[, 343 U.S. 112 (1952)], Public Law 108-378 upon its effective date ousted [the Ninth Circuit] of jurisdiction to review the Guam Supreme Court decision in this case. [The Ninth Circuit] must remand this case to the Guam Supreme Court in accordance with that fact.

Guam's Supplemental Brief Re: Jurisdiction, at 3, *Santos v. Guam*, No. 03-70472 (9th Cir.).

Petitioner took no actions, however, to have the instant case remanded to the Guam Supreme Court. Moreover, when the Ninth Circuit rejected his request to remand in *Santos*, petitioner did not seek further review in this Court of that Ninth Circuit ruling.

Petitioner also appeared to argue in *Santos*, in the alternative, that Public Law 108-378 should not apply to cases "currently pending in the Superior Court of Guam, the Supreme Court of Guam and the Ninth Circuit Court of Appeals" because the litigants in those cases would lose a substantive right to have the decision of the Guam Supreme Court reviewed by the Ninth Circuit and could not "tailor their litigation strategy" accordingly. *Id.* at 7-8.

Before the Ninth Circuit's ruling in *Santos*, however, petitioner had taken actions that recognized that that alternative argument regarding cases then pending in the Supreme Court of Guam and Ninth Circuit could not prevail. On January 29, 2005, a month after he filed his brief on jurisdiction in *Santos*, petitioner filed a petition for a writ of *certiorari* in this Court in *Guam v. Pacificare Health Insurance Co. of Micronesia, Inc.*, No. 04-1074 (docketed Feb. 7, 2005). Petitioner there sought review of a case in which the Guam Supreme Court had entered judgment on September 20, 2004 (before elimination of Ninth Circuit jurisdiction), and had denied a motion for rehearing on November 11, 2004 (after elimination of Ninth Circuit jurisdiction). Petitioner made no suggestion, as he could be read to have done in his supplemental brief

in *Santos*, that the Ninth Circuit might have jurisdiction over the case because it already was pending in the Guam Supreme Court on the effective date of Public Law 108-378. Instead, petitioner stated that this Court had "jurisdiction to grant this Petition pursuant to 28 U.S.C. § 1257(a) as applied to the territory of Guam by 48 U.S.C. § 1424-2 as amended by Section 2 of P.L. 108-378, effective on October 30, 2004." *Id.* at 1.

Petitioner was even clearer in his petition for a writ of *certiorari* filed in this Court in *Moylan v. A.B. Won Pat Guam International Airport Authority*, No. 04-1480 (docketed May 10, 2005). Petitioner there sought this Court's review of a case that had been argued before the Guam Supreme Court in October 2004, but was not decided by the Guam Supreme Court until February 2005. Petitioner explained to this Court as follows:

> Prior to October 30, 2004, a petition for writ of certiorari from a final judgment of the Supreme Court of Guam would have been filed in the Ninth Circuit U.S. Court of Appeals. Section 22B of the Organic Act of Guam, 48 U.S.C. § 1424-2, was amended by Section 2 of Public Law 108-378, 118 Stat. 2206, 2208 (Oct. 30, 2004), which terminated the Ninth Circuit['s] review by certiorari of decisions of the Supreme Court of Guam. While this Court has always been the court of last resort, it is now the only federal court with jurisdiction to review decisions from local Territorial courts of Guam interpreting questions arising under federal law.

Id. at 1-2.

Yet, at the end of January 2005 (by which time petitioner had filed his *Santos* brief and *Pacificare Health* petition), petitioner did not file a timely petition for a writ of *certiorari* in this Court to review the Guam Supreme Court judgment in this case. Petitioner let the 90-day

period following October 30, 2004, pass without even a protective filing of a *certiorari* petition in this Court.[6]

2. Petitioner's current attack on the integrity of the Guam Supreme Court does not excuse his failure to file a timely *certiorari* petition in this Court

Petitioner urges this Court to extend its tolling doctrines because, he insinuates, the Guam Supreme Court is not sufficiently independent. Pet. Br. 23-24. He suggests that Congress would not have intended that cases such as this "slip through the cracks" and escape Article III review. As discussed above, however, petitioner had more than ample time to seek review in this Court. It is his own failure to act in a timely manner that precludes further review in this case at this juncture. In any event, this Court should reject his challenge to the independence of the Guam Supreme Court.

Congress's elimination of the Ninth Circuit's jurisdiction over Guam Supreme Court decisions reflected a clear confidence that the Guam judiciary had been following the rule of law and had shown such a commitment so as to no longer need the additional intermediary review of the Ninth Circuit. Congress's determination was based in part on a recommendation from the Ninth Circuit itself to this effect. Congress had

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[6] To the extent petitioner's claim regarding the uncertain effect of Public Law 108-378 on the Ninth Circuit's jurisdiction was ever colorable, that certainty was clearly established when the Ninth Circuit issued its decision in the *Santos* case on January 3, 2006. Petitioner did not seek further review in *Santos*. He also did not file a brief or make any effort before the Ninth Circuit panel in this case to distinguish the two cases for purposes of jurisdiction, and there is no distinction. Measuring the time for *certiorari* from 90 days after the decision in *Santos*, petitioner's *certiorari* petition to this Court would have been due on April 3, 2006, almost two months before he sought and received an extension of time within which to file a *certiorari* petition in this Court, and well before petitioner filed his petition on July 19, 2006. *See* note 2, *supra*.

required the Judicial Council of the Ninth Circuit to issue a report, after study of the Guam Supreme Court's first five years' of operation, regarding whether the Guam Supreme Court had "developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States." Pub. L. No. 98-454, tit. VIII, § 801, 98 Stat. 1742 (1984).

The Ninth Circuit Judicial Council reviewed *all* of the decisions of the Guam Supreme Court and interviewed members of the Guam Supreme Court, Guam executive officials, Guam legislative officials, and members of the Guam bar. The Judicial Council concluded that (1) the Guam Supreme Court deserved "high marks for its opinions," which were "comparable" in quality "to opinions of the supreme courts of the states in the Ninth Circuit;" (2) "on issues of local law," opinions of the Guam Supreme Court had "been 'reasonable and fair;'" and (3) the Guam Supreme Court had "properly recognized and deferred to federal constitutional and statutory law, as any state court of last resort would do." Judicial Council of the Ninth Circuit, *Report to the Senate Committee of Energy and Natural Resources and the House Committee on Natural Resources on the Supreme Court of Guam* 7, 25, 28 (2001). The Council opined that "the decisional process [of the Guam Supreme Court] does not merit any special treatment on review" and suggested that Congress consider "shortening or eliminating the 15-year oversight review responsibility of the Ninth Circuit Court of Appeals and affording direct review by the United States Supreme Court." *Id.* at 25, 27.[7]

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[7] Petitioner's reference (Pet. Br. 23-24) to discussions of political interference with the Guam Supreme Court's "jurisdiction" misconceives the locus of that political debate in Guam at that time. It was not about whether to abolish the Guam Supreme Court or limit judicial review. Instead, as the Ninth Circuit Judicial Council explained to Congress, the division was "over administrative control. One group favor[ed] the Supreme Court being supreme not only in deciding cases, but also in the sense of being at the apex of all judicial administration decisions. The other side grant[ed] the Supreme Court authority to decide legal issues, but [held]

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Indeed, before petitioner lost the instant case in the Guam Supreme Court, he had been a champion of that court. After he informed the Governor and Speaker of the Guam Legislature in 2003 that he would not sign the bonds, petitioner expressly recommended that they seek a declaratory judgment from the Supreme Court of Guam. J.A. 26a; *see also* J.A. 29a (after meeting between petitioner, the Vice-Speaker of the Legislature, the Guam Lieutenant Governor, and bond counsel, petitioner sent a second letter to the Speaker of the Guam Legislature and to the Governor "again request[ing] that [they] immediately authorize a petition be brought before the Supreme Court of Guam for declaratory judgment relief" to resolve the validity of Public Law 27-19); *id.* at 30a (petitioner stating that he was prepared "to apply before the High Court on behalf of the People if you are reluctant to do so yourselves to finally resolve this important issue," and noting that "[a]ttorneys [sic] opinions do not give the finality which the High Court can provide"); *id.* at 33a (after the Governor indicated that he would file an application with the Guam Supreme Court for a declaratory judgment, petitioner offered to help draft the application).

3. Article III court review was fully available to petitioner, who did not timely pursue it

Petitioner had ample opportunity to preserve this Court's jurisdiction over the instant case.

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that each court (Supreme and trial) should have its own administrative responsibility without interference from the other." Judicial Council, *supra*, at 18. The Guam Supreme Court's administrative authority over lower Guam courts does not suggest a lack of an independent judiciary. For example, in the federal courts, it is the Judicial Council of each circuit that is charged with making "all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit." 28 U.S.C. § 332(d)(1).

First, petitioner could have filed a petition for a writ of *certiorari* within 90 days of Congress's elimination of the Ninth Circuit's jurisdiction over the case on October 30, 2004. Even if petitioner had been uncertain about the effect of the law on this case, the proper course was for him to file such a petition at least as a protective measure. If it had turned out that somehow jurisdiction had not been eliminated, this Court could have dismissed that petition as premature.

That is how this Court handles cases involving appeals from three-judge federal district courts under federal statutes that sometimes require that an appeal be taken to this Court, and sometimes to a court of appeals. The division of authority is often confusing and leads litigants to file appeals in the wrong court. Because of the absence of tolling when the jurisdiction of the wrong court is invoked, the Court recognizes this procedure that parties can use to ameliorate that legitimate confusion. When an appeal is taken to this Court where it was supposed to have gone first to the court of appeals, this Court dismisses the appeal to this Court whenever a timely notice of appeal has been filed with the court of appeals or if the time to take an appeal has not yet expired. *See, e.g., Wilentz v. Sovereign Camp, WOW*, 306 U.S. 573, 582 (1939); *Jurisdiction of the Supreme Court, supra*, § 203, at 365-366.[8]

Second, petitioner could have requested that the Ninth Circuit vacate the judgment and remand the case to the Guam Supreme Court so that it could re-enter its judgment and facilitate the filing of a timely *certiorari* petition to this Court, but petitioner made no such request

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[8] In such a protective petition, petitioner could have argued in the alternative that this Court had jurisdiction to hear the case immediately pursuant to 28 U.S.C. § 2101(e), which permits a party to apply for a writ of *certiorari* to this Court "at any time" "before judgment has been rendered in the court of appeals." *Cf. Turner v. City of Memphis*, 369 U.S. 350 (1962) (after holding that the Court lacked jurisdiction to hear appeal from three-judge district court, granting *certiorari* before judgment to the court of appeals on the protective appeal that had been taken to it).

in this case.[9] This is an alternative course of action deemed appropriate by this Court when a party files an appeal from a three-judge district court within the statutorily prescribed period but to the wrong court, and this Court vacates the lower court judgment so that the lower court can re-enter judgment and the party can file a timely notice of appeal from that judgment to the correct court. *See, e.g.*, *Franklin v. Lawrimore*, 516 U.S. 801 (1995); *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 101 (1974); *Jurisdiction of the Supreme Court*, *supra*, § 203, at 366. This Court, however, will not apply that procedure when the failure to seek review in the correct court is a "simple failure * * * to follow the clear commands" of a governing statute. *Donovan v. Richland County Ass'n. for Retarded Citizens*, 454 U.S. 389, 390 (1982).

Such relief is not available from this Court in this case at this time, however, because an *untimely* petition to this Court cannot empower it to facilitate the creation of an order that could have been timely reviewed in this Court. Otherwise the time limits in Section 2101(c) would be subject to this Court's complete discretion and would no longer be jurisdictional. *Cf. FEC*, 513 U.S. at 99 (criticizing proposed rule that would give Solicitor General "unilateral power to extend the 90-day statutory period for filing certiorari petitions by days, weeks, or as in this case, even months" because it "would result in the blurring of the jurisdictional deadline"). Furthermore, as in *Donovan*, the commands of Public Law 108-378 were clear to petitioner and thus he would not be entitled to such relief, even if it were available.

Notably, this Court has never suggested, as petitioner urges here, that the time for filing an appeal is tolled

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[9] Petitioner's request in the *Santos* litigation that the Ninth Circuit "remand this case to the Guam Supreme Court," Guam's Supplemental Brief Re: Jurisdiction, at 3, *Santos v. Guam*, No. 03-70472 (9th Cir.), may have be an oblique request for such a remedy. Neither party in that case sought this Court's review of the Ninth Circuit's denial of that request.

during the pendency of an appeal to a court that determines it lacks jurisdiction. To the contrary, the Court expressly stated that a subsequent appeal from a three-judge district court's judgment would be untimely if taken from the judgment first incorrectly appealed to this Court. *See Oklahoma Gas & Elec. Co. v. Oklahoma Packing Co.*, 292 U.S. 386, 392 (1934) ("By mistakenly appealing directly to this Court, appellants have lost their opportunity to have the decree below reviewed on its merits, as the time for appeal to the Circuit Court of Appeals has expired."); *Gully v. Interstate Natural Gas Co.*, 292 U.S. 16, 19 (1934) ("relief cannot be afforded by treating the decree of the District Court as appealable to the Circuit Court of Appeals * * * as the time for appeal to that Court has expired"); *Donovan*, 454 U.S. at 390 ("Appellants' proper course of conduct was to file a direct appeal [to the Supreme Court] from the decision of the District Court. At this time, however, such relief is foreclosed by 28 U.S.C. § 2101(a).").

II. THE GUAM SUPREME COURT'S RULING ON THE DEBT-LIMITATION PROVISION IS CONSISTENT WITH THE TEXT, HISTORY, AND PURPOSE OF THE ORGANIC ACT OF GUAM AND WARRANTS DEFERENCE

The merits of this dispute involve the straightforward construction of Section 11 of the Guam Organic Act, 48 U.S.C. § 1423a.

A. The Guam Supreme Court's Decision Is Consistent With The Plain Meaning Of The Organic Act

1. The Guam Supreme Court correctly held that the Guam Organic Act contains no limitation based upon the "assessed" value of the property on Guam

Congress enacted the Guam Organic Act in 1950 to confer United States citizenship on Guamanians and to establish the government of Guam vested, *inter alia*, with

the power to establish a popularly elected legislature and the powers to tax and borrow. This was a very dramatic change from the pre-existing governmental structure under which the people of Guam had been subject to the plenary authority of a United States naval governor.[10]

With respect to borrowing, Section 11 of the Organic Act of Guam specifically provides, in relevant part:

> [W]hen necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam.

48 U.S.C. § 1423a. The Guam Supreme Court correctly held that the limitation means that "the allowable public indebtedness under Section 11 is to be ascertained with reference to the appraised value of the property on Guam, as reflected on the certified tax roll in effect at the time the debt is incurred." Pet. App. 2a. The Court held that the Guam legislature thus may borrow no more than 10 percent of the appraised value of taxable property on Guam, *id.* at 7a-19a, which under Guam law is the actual market value of the land. *See* 11 G.C.A. § 24102(f) ("appraised value means the amount at which property would be taken in payment of a just debt from a solvent debtor"). This sensible reading tracks the language of the statutory provision, provides understanding to each statutory term, and neither omits nor adds meaning to any words of the statute.

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[10] Prior to the Organic Act, the island and its people were under the complete and unqualified control of the Navy as provided in an 1898 Executive Order of President McKinley. Providing a Civil Government for Guam, S. Rep. No. 81-2109 at 1, 15 (1950). A succession of naval governors exercised all legislative, executive, and judicial authority over the island. They "revoked all existing laws, rewrote and promulgated new ones, created courts, acted as judges, levied, collected, and disbursed revenues, and, in general, directed the fiscal, economic, and political well-being of the Guamanians according to their own best judgment." *Ibid.*

Had Congress intended the Guam legislature's borrowing power to be limited to 10 percent of the *assessed* valuation of the property on Guam, as petitioner suggests, Congress knew full well how to say so and would have done so. Pet. App. 13a. The Guam Supreme Court exposed the flaw in petitioner's argument in this regard when it explained that "[t]he Virgin Islands' [debt-limitation] provision was enacted a mere 10 months prior to the enactment of Section 11," and Congress provided there "that 'no public indebtedness of the government of the Virgin Islands shall be incurred in excess of 10 per centum of the *aggregate assessed valuation* of the taxable property in the islands.'" *Id.* at 12a (quoting 48 U.S.C. § 1403) (emphasis in original). The Guam Supreme Court reasoned that Congress's decision to use the term "aggregate tax valuation of the property" in the Guam Organic Act instead of "aggregate assessed valuation of taxable real property," as employed in the Virgin Islands Organic Act, demonstrates that Congress did not intend the Guam government's "debt limit * * * to be based on the *assessed* valuation of property." *Ibid.* (emphasis in original).

Moreover, the Guam Supreme Court held that Congress's use of the term "tax" in Section 11 must have had meaning, and concluded that "it is clear that the debt limit is to be based on the value of property being taxed." *Id.* at 17a. The court thus noted that, "[b]y specifying that the tax valuation is to be used, there would be no need to then say that the debt limit is to be based on the taxable property." *Ibid.*

2. Standard rules of statutory construction support the Guam Supreme Court's comparison to other federal territorial laws and construction of the Guam Organic Act

a. Petitioner, in effect, suggests that the absence of the term "assessed" in the debt-limitation provision was merely congressional oversight. Pet. Br. 30-31. But this Court "ordinarily resist[s] reading words or elements into

a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997); *see also Brewster v. Gage*, 280 U.S. 327, 337 (1930) ("The deliberate selection of language so differing from that used in the earlier acts indicates that a change of law was intended.").

To be sure, in some instances, such as the Virgin Islands Organic Act example which the Guam Supreme Court readily distinguished, Congress *has* limited territorial borrowing (or the borrowing of municipalities of territories) to some percentage of the aggregate *assessed* value of taxable property in the territory. *See* Pub. L. No. 94-241, art. I, § 607, 90 Stat. 263 (1976) (approving constitution of the Northern Mariana Islands which limits borrowing to the "ten percentum of the aggregate assessed valuation"); Ch. 339, § 55, 31 Stat. 151 (1900) (limiting borrowing in Hawaii to a percentage of the "assessed value of taxable property").[11]

But this express limitation based upon "assessed" value or valuation is neither universal nor without purpose. Indeed, petitioner fundamentally ignores that Congress has employed often distinct language for the different territories, and acceptance of petitioner's proposition would require this Court to conclude that Congress believed there was no difference between any of the territories. Such a ruling would not only ignore the plain language of the various federal territorial laws, but it would fail to account for their different social and legal histories.

In the Virgin Islands, for example, there was a history of insufficient tax revenues due to a mix of local and Danish tax laws. *Ricardo v. Ambrose*, 211 F.2d 212, 216

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[11] Petitioner also renews, without any elaboration, his argument that the use of the term "assessed valuation" in the law governing the Virgin Islands was the result of a mere "perfecting amendment." Pet. Br. 31-32 n.11. The offered amendment was far from a mere perfecting amendment, because it would have substantively altered the language to "aggregate tax valuation of real and personal property," H.R. Rep. No. 81-682, at 2, 3 (1949), which is plainly different from "aggregate assessed value of the taxable real property," 48 U.S.C. § 1403. *See* Br. in Opp. at 20 n.8.

(3d Cir. 1954). Congress thus imposed significant oversight on the Virgin Islands taxation system (including taxation on "actual value," 48 U.S.C. § 1401a), and, when authorizing the Virgin Islands government to issue bonds, mandated "[t]hat the government of the Virgin Islands * * * shall be obliged to levy and collect sufficient taxes for servicing any of the outstanding bonds, even if such taxation is required at a rate in excess of or in addition to the tax or tax rate of 1.25 per centum of the assessed value." Pub. L. No. 81-418, § 1, 63 Stat. 940-941 (1949) (codified at 48 U.S.C. § 1403). As such, petitioner is wrong to suggest that "it was necessary for Congress to insert the word 'assessed' before valuation in the debt-limitation proviso in order to make clear that the debt ceiling was tied to the assessed value of property, not its full, appraised value." Pet. Br. 31. Congress meant *precisely* that, to ensure that the Virgin Islands would raise taxes on the assessed value of property to service any outstanding debts. 48 U.S.C. § 1403. No such provision exists in the Guam Organic Act, and this Court should not read any such limitation into it.[12]

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[12] The history of the Virgin Islands differs substantially from that of Guam, in which all local laws were repealed in 1898. Due to the problematic tax scheme in the Virgin Islands, Congress enacted 48 U.S.C. §§ 1401a to 1401e, to establish a uniform system of assessment and taxation, and accomplished this goal by mandating that "all taxes on real property in the Virgin Islands shall be computed on the basis of the actual value of such property," 48 U.S.C. § 1401a. By requiring that taxes be imposed on the actual value of property, Congress ensured that there would be tax uniformity so that different types of property could not be taxed at different tax rates (through different assessed values), and provided greater means for the Virgin Islands government to meet revenue demands. Accordingly, this system explicitly provided for a 1.25 percent tax rate on the "assessed value" of property in the Virgin Islands. *Id.* § 1401b ("[T]he tax on real property * * * shall be at the rate of 1.25 per centum of the assessed value.").

There thus can be little surprise that, a few years later in 1949, Congress would then impose a debt limitation based upon the "assessed" valuation of taxable property in the Virgin Islands – a term directly linked to the 1.25 percent tax rate of the Virgin Islands under 48 U.S.C. § 1401b – and require that the Virgin Islands raise the tax rate on the "assessed" valuation of

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When Alaska was a territory, by contrast, Congress imposed a debt limit on Alaska municipalities of "10 per centum of the aggregate taxable value" of the property of the municipal corporation, without any reference to any "assessed" value. Pub. L. No. 74-626, § 1, 49 Stat. 1388 (1936). The legislative history of that act confirms that Congress intended that law to constitute "[a] limitation of 10 percent of the total value of the taxable property," H.R. Rep. No. 74-2290, 74th Cong. 1 (1936), and that this construction was "in harmony" with a similar limitation then existing in Puerto Rico, *id.* at 2, which employed the same language as used in the Guam Organic Act, Pub. L. No. 53-797, § 3, 44 Stat. 1418 (1927) ("aggregate tax valuation of its property"); Ch. 191, § 38, 31 Stat. 77, 86 (1900) ("[N]o public indebtedness of Porto Rico or of any municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property."); *see also* Pub. L. No. 51-42, § 1, 42 Stat. 145 (1921) (limitation in the Philippines to "7 per centum of the aggregate tax valuation of its property at any one time").

The Guam Supreme Court gave that precise interpretation to the near-identical language of the Guam Organic Act. Such action can hardly be described as an oversight against this backdrop of comparable legislation.

b. Petitioner also would have this Court ignore the well-settled canon of statutory construction that exceptions must be construed narrowly. *See City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731-732 (1995); *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 96 (1993). In particular, in light of Congress's contemporaneous delegation of power to the people of Guam to elect a legislature with a broad mandate supporting self-governance within Guam, the

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such property when conferring on the Virgin Islands the power to borrow, 48 U.S.C. § 1403. Congress thereby ensured that the Virgin Islands would actually raise taxes, by referring to the assessed value, before taking on any debt, a circumstance not present in Guam.

debt limitation of the Organic Act must be "read 'narrowly in order to preserve the primary operation of th[at] [policy].'" *City of Edmonds*, 514 U.S. at 732 (quoting *Commissioner v. Clark*, 489 U.S. 726, 739 (1989)); *Cf. Puerto Rico v. Shell Co.*, 302 U.S. 253, 261 (1937). That reading is even more necessary and significant when core governmental powers, such as the power to tax and borrow, are being limited, so that ambiguity must be read in favor of the territorial government. *Cf. Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) ("'[T]o give the state-displacing weight of federal law to mere congressional *ambiguity* would evade the very procedure for lawmaking on which *Garcia* relied to protect states' interests.'") (quoting L. Tribe, American Constitutional Law § 6-25, at 480 (2d ed. 1988)).

B. The Guam Supreme Court's Interpretation Of The Guam Organic Act Is Entitled To Substantial Deference

1. The Governor submits that, for the reasons discussed elsewhere in this brief and set forth at length in the Guam Supreme Court's detailed opinion, the Guam Supreme Court reached a complete and reasoned construction of Section 11. Pet. App. 1a-36a. *Even if* this Court were to conclude, however, that ambiguity exists and that the Guam Supreme Court's decision is but one of a number of possible constructions of the Act, this Court should defer to the Guam court's interpretation of Section 11. *Pernell v. Southall Realty*, 416 U.S. 363 (1974) (finding the Court "bound" by the local D.C. Court of Appeals' interpretation of a federal law of purely local concern).

This "Court has repeatedly emphasized that the decisions of territorial courts on matters of purely local concern are entitled to great weight and should not be disturbed except for cogent reasons." *Jurisdiction of the Supreme Court, supra*, § 367 at 730 (footnotes omitted). Such deference applies even as it relates to an interpretation of federal law, if the law relates to a matter of purely local concern. *Ibid.*; *see also Pernell*, 416 U.S. at 369 (reviewing decision of the local D.C. Court of Appeals interpreting congressionally enacted law);

Santa Fe Central Ry. Co. v. Friday, 232 U.S. 694, 700 (1914) (reviewing decision of the Supreme Court of the Territory of New Mexico interpreting federal Organic Act and other federal laws relating to the jurisdiction of territorial court); *see also Hall v. C&P Telephone Co.*, 793 F.2d 1354 (D.C. Cir. 1986) (deferring to local D.C. Court of Appeals' interpretation of federal law applicable solely to the District of Columbia).

In *Pernell*, for example, this Court explained that it has long deferred to "decisions of the courts of the District [of Columbia] involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application." 416 U.S. at 366. This deference extends to the "interpretation of Acts of Congress directed toward the local jurisdiction," *id.* at 367, even though such laws, "like other federal laws, admittedly come within this Court's Art. III jurisdiction," *id.* at 368; *see also Santa Fe Central Ry. Co. v. Friday*, 232 U.S. at 700. The *Pernell* Court emphasized that its deference was supported by Congress's decision to alter the District of Columbia's judicial system so that the decisions of the local D.C. Court of Appeals were "made reviewable by this Court in the same manner that [the Court] review[s] judgments of the highest courts of the several States," as opposed to having local laws reviewed by lower federal courts. *Pernell*, 416 U.S. at 367.

The circumstances present in *Pernell* likewise exist in the instant dispute because the Guam Supreme Court is organized in a manner similar to the local D.C. Court of Appeals. Significantly, Congress has consistently and repeatedly taken steps to support the creation of the Guam Supreme Court. When this Court held, in *Territory of Guam v. Olsen*, that the Organic Act of 1950 did not authorize the Guam Legislature's creation of "a local Supreme Court having the power of ultimate review of cases involving local matters," 431 U.S. 195, 202 (1977), Congress reacted by amending the Organic Act so that "the legislature of Guam may in its discretion establish an appellate court" with "jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive

jurisdiction." Pub. L. No. 98-454, tit. VIII, § 22A(a)-(b), 98 Stat. 1732 (1984).[13] Congress mandated that the "relations" between federal courts, including this Court, and the local court of Guam "shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings." *Id.* § 22B. As previously discussed, *see* pages 11-13 *supra*, even though the Ninth Circuit was to maintain intermediate *certiorari* jurisdiction over that appellate court temporarily for 15 years, *see ibid.*, Congress eliminated that provision years early, so that only this Court now maintains review of the Guam Supreme Court's decisions, *see* Pub. L. No. 108-378, § 2, 118 Stat. 2208. Congress based its decision on the findings of the Ninth Circuit Judicial Council's report, which attested to the quality and ability of the Guam Supreme Court during the period in which the case below was decided. *See* pages 24-26 *supra*.[14]

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[13] The Ninth Circuit Judicial Conference endorsed the congressional action and explained how authorization to Guam to create its own court would constitute "recognition of autonomy for the territory to structure its own system and * * * an expression of congressional confidence." *A Bill to Implement the Recommendations of the Interim Report of the Northern Mariana Islands Commission on Federal Laws and To Amend the Organic Act of the Virgin Islands and the Organic Act of Guam, and for Other Purposes, and a Bill to Repeal Certain Provisions of Law Relating to the Territories and Insular Possessions of the United States: Hearings on S. 1366 and S. 1367 Before the Senate Subcomm. on Energy Conservation & Supply of the Comm. on Energy & Natural Resources*, 98th Cong. 371 (1983) (statement of Anthony M. Kennedy, then-Ninth Circuit Judge).

[14] Because Congress removed the Ninth Circuit's *certiorari* jurisdiction based upon the well-grounded institutional traditions established by the Guam Supreme Court, it is of no moment that the Guam Supreme Court's decision issued prior to the removal of the Ninth Circuit's *certiorari* jurisdiction. Indeed, petitioner's suggestion that the Guam Supreme Court is entitled to less deference under such circumstances because the ruling below occurred *prior* to Congress's removal of the Ninth Circuit's *certiorari* jurisdiction is really an argument that the court of appeals should have retained jurisdiction over petitioner's appeal. Of course, this Court lacks jurisdiction to address the question of the Ninth Circuit's continuing jurisdiction over this case because petitioner did not

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2. It cannot be disputed that Section 11 is a matter of purely local concern to Guam. Section 11 by its own terms pertains only to the powers of the Guam government; accordingly, the Guam court's interpretation here does not alter the meaning of the borrowing authority of *any* other state, local, or territorial government. As such, the instant dispute is indistinguishable from *Pernell*, where this Court deferred to the local D.C. Court of Appeals' construction of a *federal* law applicable only to the District of Columbia, and *Santa Fe Central Ry. Co. v. Friday*, where this Court deferred to the Supreme Court of the Territory of New Mexico's interpretation of two *federal* laws, including the New Mexico Organic Act. *Pernell*, 416 U.S. at 367; *Santa Fe Central Ry. Co. v. Friday*, 232 U.S. at 699-700.[15]

3. Under *Pernell*, *Santa Fe Central Ry. Co. v. Friday*, and the numerous other instances where a territorial court's ruling is under review, the deference that this Court confers is far from insignificant. The Court requires that a decision below that is plainly grounded in "local law matters," not be reversed "'save in exceptional situations where egregious error has been committed.'" *Pernell*, 416 U.S. at 369; *see also Santa Fe Central Ry. Co v. Friday.*, 232 U.S. at 700 ("We should not decide against the local understanding of a matter of purely local concern unless we thought it clearly wrong, instead of thinking it, as we

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seek a writ of *certiorari* seeking this Court's review of the judgment of dismissal. See *Western Union Tel. Co. v. Hughes*, 203 U.S. 505 (1906).

[15] Petitioner argues that *Pernell* is inapplicable to the Guam Supreme Court because "it has never been cited as supporting deference to the decisions of the courts of non-incorporated territories such as Guam." Reply Br. Supp. Pet. at 4 n.1. But that argument ignores that the *Pernell* Court relied upon a long-standing rule of deference. *See, e.g*, *Santa Fe Central Ry. Co. v. Friday*, 232 U.S. at 700. This principle of deference to territorial courts on local issues has extended not only to incorporated territories, but also to unincorporated ones. *Waialua Ag. Co. v. Christian*, 305 U.S. 91, 109 (1938); Stanley K. Laughlin, Jr., *The Laws of United States Territories and Affiliated Jurisdictions* § 6.5, at 89 (1995) (Hawaii as an unincorporated territory).

do, plainly right."); *Whalen v. United States*, 445 U.S. 684, 707 (1980) (Rehnquist, J. dissenting) (deferring so long as the opinion on local law is "defensible");[16] *cf. Waialua Ag. Co. v. Christian*, 305 U.S. 91, 109 (1938) ("Unless there is clear departure from ordinary legal principles, the preference of a federal court as to the correct rule of general or local law should not be imposed upon Hawaii").

No such "exceptional situation" or "egregious error" warrants reversal here. At worst, the Guam Supreme Court chose one plausible interpretation of the statute over another (we submit, a far less plausible interpretation). But, the Guam Supreme Court's interpretation needs to be no more than plausible to warrant deference from this Court in these circumstances, *Pernell*, 416 U.S. at 366 (holding that the D.C. Court of Appeals' interpretation of federal law was far from infallible and that an "argument" could be made that the D.C. court's decision was incorrect), which is a low bar that the Guam Supreme Court's extremely probable construction clearly passes.

In short, the justification for deference here is virtually indistinguishable from the rationale present in this Court's precedents. Congress has mandated that the Supreme Court of Guam is an independent, co-equal branch of government with broad powers over the territory's judicial branch. 48 U.S.C. § 1424-1. Failure to accord the Guam Supreme Court's ruling such deference in the instant dispute would constitute a strikingly negative indictment by this Court as to the Guam Supreme Court's judicial independence and ability to follow the rule of law.[17]

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[16] In *Whalen*, the Court concluded that "customary deference" to the lower court's "construction of local federal legislation is inappropriate with respect to the statutes involved, for the reason that the petitioner's claim under the Double Jeopardy Clause cannot be separated entirely from a resolution of the question of statutory construction." *Id.* at 688. No similar federal constitutional issue, or issue of broad federal implication, is commingled with the statutory issue present in the instant dispute.

[17] Indeed, the absence of any deference would not only significantly undermine the Guam judicial system and confidence of the people of

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C. Petitioner's Attempt To Defeat The Guam Supreme Court's Interpretation Ignores The Plain Meaning Of The Statute And Accords The Guam Supreme Court No Deference

1. Petitioner's view of the Guam Organic Act imposes a limitation that appears nowhere in the text of the statute

a. Petitioner attempts to defeat the judgment of the Guam Supreme Court by proffering a construction of the statute that artificially lowers the Guam legislature's borrowing authority without any basis in the statutory text for that interpretation. Petitioner manufactures this interpretation by relying on current Guam tax law rather than on the Organic Act.

Specifically, Guam law now imposes a 0.25 percent tax rate on the assessed property values in Guam, viz., 35 percent of the property's actual appraised value as determined by the government's tax assessor. 11 G.C.A. §§ 24102(f), 24103, 24306. Seizing upon this current aspect of territorial law, petitioner argues that the Guam statute dictates the amount of borrowing allowable under the Organic Act, and does so by requiring that the federal borrowing limit be calculated from the "assessed" value of taxable property. But the term "assessed" appears nowhere in the debt limitation provision of the Organic Act.

b. Petitioner also contends that public indebtedness of Guam is strictly limited "to anticipated taxes and revenues," Pet. Br. 25-26, but that is a red herring.[18] He

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Guam that their elected legislature possesses basic powers necessary for self governance, but it also would be particularly incongruous when compared to the deference – be it *Chevron* or *Skidmore* – that courts accord Article I adjudicative bodies. *See United States v. Mead Corp.*, 533 U.S. 218 (2001); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-844 (1984). Indeed, the Guam Supreme Court is expressly contemplated by the Organic Act to be "the highest court of the judicial branch of Guam." 48 U.S.C. § 1424-1.

[18] On numerous occasions (Pet. Br. 19, 27, 34), petitioner argues that the debt must be repaid from "tax revenues" rather than in

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concedes that there is no congressional mandate that borrowing be limited to pre-existing streams of revenue. *Id.* at 25 ("[B]orrowing by the Guam Legislature is permissible only when the Legislature determines that the debt incurred can be retired from existing or reasonably *anticipated sources of tax revenue*.") (emphasis supplied). Had Congress wanted to impose a cap based upon *actual* revenues, it easily could have done so, as it has on other occasions. *See* Pub. L. No. 90-120, tit. II, § 201, 81 Stat. 340 (1967) (limiting the "aggregate indebtedness of the District [of Columbia] to * * * 6 per centum of the general revenue of the District").

Moreover, petitioner's argument overlooks the fact that Congress gave the government of Guam far more sources of revenues than just property taxation. Congress granted the legislature the power to tax "internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions." 48 U.S.C. § 1423a. In addition, the Guam Organic Act provides that "[t]he income-tax laws in force in the United States of America * * * shall be held to be likewise in force in Guam" but the revenues from such taxes are not payable to the United States, rather they are "payable to the government of Guam." 48 U.S.C. § 1421i(a)-(b).[19]

Accordingly, property taxes are far from the only source of revenue that the government of Guam may "anticipate." In fact, Guam historically has not relied upon property taxes as its major source of revenues. *See, e.g.*, Governor of Guam, *1956 Annual Report to the Secretary of the Interior* 49 (in 1956, property taxes accounted for 1.6 percent of Gaum tax revenues, $170,864 out of $10,575,090).

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anticipation of "taxes *and* revenues." This error artificially ignores significant sources of income other than taxes that Guam has available to retire public debt.

[19] The Organic Act also permits "the Legislature of Guam * * * [to] levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam." 48 U.S.C. § 1421i(a).

Indeed, that remains the case today, where revenues are overwhelmingly derived from income taxes. *See* U.S. Department of the Interior, Office of Insular Affairs, *A Report on the State of the Islands* 62 (1996) (for 1990, property taxes generated $7,759,000 in revenue out of $429,164,000 in total taxes received).

In light of these various streams of revenue, it would have made little sense for Congress to limit Guam's indebtedness, where such borrowing may anticipate taxes and revenues, to only the assessed value of taxable property. Indeed, the fallacy of petitioner's argument is underscored by the fact that, if this Court were to adopt petitioner's view, the Guam legislature would be required always to maintain some property tax in order to borrow, *even though* the other sources of revenues are more than sufficient to "anticipate" taxes and revenues sufficient to repay the debt.

For example, under petitioner's view, it might violate the Organic Act for the legislature to impose a sales taxes and correspondingly reduce property taxes by lowering the assessed valuation of the property, if doing so would push the government's pre-existing debt above Section 11's debt limit. This might be the case even if the modification to the tax system was revenue neutral or generated more income for the government. More significantly, because, as petitioner concedes, Congress has "not mandate[d] a particular method of valuation" by the Guam government (Pet. Br. 26), Guam could construct a taxation scheme whereby the assessed value of the property was 150 percent of the actual value of the property, *cf. Bluebeard's Castle, Inc. v. Government of the Virgin Islands*, 321 F.3d 394, 398 (3d Cir.) (assessed value of the property being almost $50 million greater than the claimed actual value), *cert. denied*, 540 U.S. 823 (2003), with a tax rate correspondingly reduced so as to not levy any additional property taxes on the electorate. The result of this system would be revenue neutral, but it would vastly increase the ability of the government to borrow. As such, it is petitioner's construction of Section 11 that fails to provide a real limit on borrowing to "anticipate[d]" taxes and revenues. The more logical conclusion (and one which is consistent with the plain meaning of the statute) is that

Congress established a maximum borrowing limit without regard to the manner in which the local government taxed the property on the Island.

What Congress's debt ceiling in Guam ensures, by looking to the aggregate tax valuation of property, is that Guam has the necessary means to repay its bonds by exercising its full property tax powers. But Congress has not obligated the Guam legislature to use this particular method of taxation where the Guam legislature determines there is a superior method of generating revenue to repay the bonds.

c. Petitioner argues that the Guam Supreme Court's construction reads the term "tax" out of "aggregate tax valuation of the property in Guam." Pet. Br. 26. Petitioner asserts that, had Congress intended to measure the debt limit by the full market value of property subject to taxation, it would have phrased the language of Section 11 differently.

Petitioner attempts to support this argument by reliance on state court constructions of state constitutional debt limitations, but he identifies no state law provision employing the same language as used in the Guam Organic Act. Pet. Br. 27-29. Petitioner's cases, instead, merely demonstrate that where a state constitution limits indebtedness by its explicit terms to the "assessed" valuation of property, those terms prevail, *see Johanson v. Independent Sch. Dist. No. 23 of Anoka County*, 73 N.W.2d 126, 129 (Minn. 1955); *see also* Br. in Opp. at 20-21 (citing cases), and that where a state constitution includes no such limitation to the "assessed" value, the actual value is used to calculate the debt ceiling, *see, e.g., Board of Education v. Passey*, 246 P.2d 1078 (Utah 1952).

Indeed, in making this argument, petitioner concedes, as he must, that not all state jurisdictions limit the borrowing powers of municipalities to a percentage of the assessed value of property. In many of the cases upon which petitioner relies, the state court held that the debt limitation was a percentage of the actual value of the property, even though the municipality taxed only a lower assessed valuation. *See Passey*, 246 P.2d at 1078; *N.W.*

Halsey & Co. v. City of Belle Plaine, 104 N.W. 494, 495-497 (Iowa 1905); *Hansen v. City of Hoquiam*, 163 P. 391, 392 (Wash. 1917). Thus, it is hardly incongruous, as petitioner suggests (Pet. Br. 32-35), for the Guam debt limitation to be imposed on the actual value of property, even though the property taxes are paid on a lower assessed valuation.[20]

Furthermore, it is petitioner, not the Governor and legislature, who fails to give meaning to the term "tax" in Section 11. Petitioner ignores that Section 11 expressly treats the terms "tax" and "assess" differently. The plain language of Section 11 of the Organic Act empowers the Guam legislature to impose "[t]axes and assessments." 48 U.S.C. § 1423a.[21] Congress thus gave the government what it viewed to be two separate powers, to tax and to assess, and required only that the legislature do so in a "uniform[]" manner. But, with respect to borrowing, Congress limited indebtedness with reference to only one – *i.e.*, 10 percent of the "tax" valuation of the property, not 10 percent of the "assessed" valuation of the property. *Ibid.* Under petitioner's reading of Section 11, these two powers – to tax and to assess – would be identical, making a key term in Section 11 superfluous.

Accordingly, in the instant dispute, the text of the Guam Organic Act is controlling, and the Guam Supreme Court properly construed the provision. As this Court has consistently held, "[t]he starting point for our interpretation of a statute is always its language." *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989). "When the

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[20] Petitioner overstates the meaning of *Passey*. *See* Br. in Opp. at 21. There, the court concluded that the fact that the "value" of the property was to be ascertained from the assessment did not mean that the state constitution limited municipal borrowing to the assessed value of property. *Passey*, 246 P.2d at 1079.

[21] The full text of the provision, which immediately precedes Section 11's borrowing provision, reads: "Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam * * *." 48 U.S.C. § 1423a.

words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). The Guam Supreme Court followed these principles, and this Court should affirm its interpretation.[22]

2. Public policy supports the Governor's interpretation and petitioner's contrary argument is based on a misunderstanding of the Guam government's revenue sources

As a last resort, petitioner discards all textual arguments and contends that, based on his own view of public policy, the Guam government's borrowing must be limited to 10 percent of the assessed valuation of property in order to benefit taxpayers by restraining government expenditures. Pet. Br. 32-35.

Absent clear language from Congress, there is no basis, however, to read the debt limitation in Section 11 so narrowly. As previously discussed, petitioner fundamentally ignores the numerous sources of taxation and revenues available to the Guam government, almost all of which are entirely unrelated to property taxation. *See* pages 41-43 *supra*.

Moreover, petitioner's reliance on cases construing municipal debt limits is unwarranted. *See* Pet. Br. 33-35 (citing state court cases). A municipal government's primary source of revenue is property taxes. *See City of Phoenix, Ariz. v. Kolodziejski*, 399 U.S. 204, 208 & n.4 (1970) (noting most municipal revenues are derived from property taxes). Limiting a municipality's borrowing to a

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[22] Petitioner suggests that the Guam legislature once adopted the Attorney General's interpretation of Section 11. Pet. Br. 7. That view, however, was held only by an internal legal advisor, Br. in Opp. App. 3a, and petitioner ignores the fact that the Guam Superior Court expressly rejected that interpretation in 1989, *id.* at 17a.

percentage of the *assessed* value of property (which, in any event, only some States do, *see* pages 43-44 *supra*) thus may ensure that the municipal government will be able to repay its indebtedness. But such a limitation has little meaning to a government, such as Guam's, that has broad powers and numerous divergent streams of revenues.

The practical implications of the Attorney General's argument are significant. Much of the bond amount authorized by the Guam Legislature is designed to refinance pre-existing debt from prior Administrations at more favorable terms (thus to lower outstanding obligations) and to inject money owed (such as personal income tax refunds) into the economy. Specifically, the issued bonds are to be used by the government to pay income tax refunds, utility expenses to the Guam Power Authority, retirement fund obligations, withholding tax, general fund vendors, public school repairs, and to "fund an escrow to pay debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A at matched maturity." Not only are these amounts well within the means of the government to repay, *see* pages 41-43 *supra*, but they hardly constitute care-free spending that will burden future generations on Guam.

Without the ability to issue these bonds, the Guam government will be ill-equipped to meet important government obligations. This would be a particularly incongruous result where Guam, which is well on the road to full economic recovery due to increased tourism and a renewed presence of the United States military, needs the ability to reasonably borrow to fuel future economic growth. *See* First Hawaiian Bank, *Economic Forecast: Guam Outlook Brighter Than In Several Years* 1-2, 8-12 (2006-2007). At bottom, petitioner seeks to do no more than exercise a "legal" veto on legislation with which petitioner disagrees as a matter of policy. That result is nowhere contemplated by the Organic Act, and it would undermine important public policies enacted by the Guam government. Petitioner, by proffering an overly restrictive interpretation of Section 11, undermines the power of the Guam government, restrains the ability of Guamanians

to govern their local affairs, and threatens the economic well-being of all residents of the Island.

CONCLUSION

For the reasons set forth above, the writ of *certiorari* should be dismissed for lack of jurisdiction. In the alternative, the judgment of the Supreme Court of Guam should be affirmed.

Respectfully submitted,

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No. 06-116

IN THE

Supreme Court of the United States

DOUGLAS B. MOYLAN,
ATTORNEY GENERAL OF GUAM,

Petitioner,

v.

FELIX P. CAMACHO,
GOVERNOR OF GUAM,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GUAM

REPLY BRIEF FOR PETITIONER

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I. THE PETITION FOR A WRIT OF CERTIORARI FROM THIS COURT WAS TIMELY

This Court has repeatedly recognized that actions that suspend the finality of a judgment sought to be reviewed restart the running of the 90-day period for filing a certiorari petition with this Court. Both petitioner's filing of a proper petition for certiorari with the Ninth Circuit—at a time when that court had exclusive jurisdiction to consider such petitions—and the Ninth Circuit's granting of the petition did just that, by subjecting the Guam Supreme Court's judgment—and thus the parties' rights—to revision. Respondent acknowledges (Br. 10) that, in the unusual circumstances of this case, the Ninth Circuit played a role analogous to that of a state high court exercising discretionary review over a lower court's judgment, and thus that petitioner's filing of a timely certiorari petition with the Ninth Circuit prevented the 90-day clock from running. Respondent also does not contest, but is hesitant to acknowledge, that the Ninth Circuit's granting of the petition continued the suspension of the filing period.[1] Respondent resists the full logic of the analogy, however, by insisting that the clock was not suspended throughout the pendency of the writ of the certiorari, but instead was restarted by the October 2004 amendment of the Guam Organic Act. None of respondent's arguments bears scrutiny.

A. The Considerations Driving The Timeliness Decisions Cited By Respondent Are Not Present Here

1. Respondent identifies (Br. 15) what he claims are four categories of decisions (two containing only a single decision) that supposedly establish the rule that "a lower court's resolution of its jurisdiction to resolve the merits of a case after that court already has been divested of jurisdiction over the case does not extend the time for filing a petition for a writ of *certiorari*." Respondent contends that this

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[1] That hesitancy may explain the puzzling fact that the timeline offered by respondent on page 15 of his brief omits altogether the Ninth Circuit's granting of petitioner's certiorari petition on October 23, 2003.

case is such a case, and that the Ninth Circuit's deliberations following amendment of the Guam Organic Act in October 2004 therefore ceased to extend the time for filing a certiorari petition here. That argument fails for several reasons.

First, in this case, unlike in all of the ones described by respondent, the court below had affirmatively asserted jurisdiction over the case by granting the certiorari petition before the Guam Organic Act was amended. This Court in effect emphasized that fundamental point in its wording of the first question presented by referring to the period during which "the writ of certiorari . . . *was pending* before" the Ninth Circuit (emphasis added). Thus, the lower court here did in fact treat its granting of the writ of certiorari as "put[ting] the basis of th[e] earlier order again in issue." *Pfister* v. *Northern Ill. Fin. Co.*, 317 U.S. 144, 149 (1942). Contrary to respondent's assertion (Br. 14), holding that the 28 U.S.C. § 2101(c) clock did not restart until the Ninth Circuit made its determination and dismissed the case in no way opens the door to "dissatisfied litigants filing in the wrong court to extend proceedings and waiting for that court to declare its lack of jurisdiction before seeking further review from this Court." Instead, petitioner seeks recognition of a narrow application of this Court's normal rule that where the finality of an underlying judgment has previously been suspended by an intermediate court's review on the merits, such suspension continues until the court completes its review—even if that review includes consideration of an *intervening* change in its jurisdiction.

The sole decision in respondent's first category (Br. 15-16), *Market Street Railway Co.* v. *Railroad Commission*, 324 U.S. 548 (1945), is not analogous to this case for precisely this reason. In *Market Street Railway*, this Court stated in dictum that the 90-day clock would restart after the expiration of a state statutory deadline for consideration of an initial rehearing petition, even if the petitioned state court had not yet formally denied the petition. *Market Street Railway* thus involved the routine application of well-established

state procedural rules concerning petitions for rehearing,[2] not, as in this case, application of a federally mandated exhaustion requirement where the lower court had properly asserted jurisdiction and had begun merits deliberations before an intervening change in law required that court to reassess its jurisdiction over the pending matter.

Second, to the extent the decisions in respondent's three other categories (Br. 16-20) bear any resemblance to this case, both the rule and rationale of those decisions support resetting the filing period here. Those decisions hold that unlike the filing of *initial, timely* petitions for rehearing, which suspend the operation of appellate filing deadlines until the petition is resolved, requests for leave to file *second* or *untimely* petitions for rehearing or other post-judgment relief only reset appellate deadlines if they actually prompt the petitioned court to reopen consideration of the underlying judgment.[3] That rule favors suspension here because, as noted above, petitioner's certiorari petition to the Ninth Circuit was timely and the Ninth Circuit's grant of certiorari opened the merits of the Guam Supreme Court's judgment to reconsideration.

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[2] This Court's decision to dismiss the petition for writ of certiorari as untimely filed in *Doss* v. *Illinois*, 320 U.S. 762 (1943), also appears to fit in this category. The Supreme Court of Illinois issued an initial opinion on January 1, 1943. Petitioner filed a rehearing petition, but on March 11, 1943, the court struck the petition as violating court rules. *People* v. *Doss*, 46 N.E.2d 984 (Ill. 1943); *see also Jurisdiction of the Supreme Court of the United States* § 384, at 769 (R. Wolfson & P. Kurland eds., 2d ed. 1961). Thus, *Doss* appears to stand for the proposition that a defective initial rehearing petition that does not satisfy relevant state rules does not operate to reset appellate filing requirements. That rule has no application to this case.

[3] Respondent (Br. 16) places *Isenberg* v. *Sherman*, 286 U.S. 547 (1932), which involved the filing of a motion to recall a state supreme court's remittitur based on claims of fraud on the court, in a category of its own. But it involved the same considerations that motivate the rule on successive or untimely petitions for rehearing. The state court expressly characterized the motion as "an attempt to secure a second rehearing on the merits." *Isenberg* v. *Sherman*, 7 P.2d 1006, 1007 (Cal. 1932) (en banc).

Moreover, the prudential considerations underlying this Court's rule denying finality-suspending effect to many successive and untimely petitions are plainly not present here. As respondent notes, this Court has placed on petitioners the risk that a successive or untimely request for rehearing or other post-judgment relief will be denied, thus requiring petitioners to file with this Court before knowing whether the court below will grant the request. *See, e.g.*, *Wayne United Gas Co.* v. *Owens-Ill. Glass Co.*, 300 U.S. 131, 137 (1937). But the Court has done so because (i) such filings necessarily arise only when a petitioner has already had an opportunity to seek reconsideration at least once; and thus (ii) allowing later petitions automatically to extend appellate filing deadlines would invite abuse and substantially interfere with the repose provided by such time limits. *See, e.g.*, *Jurisdiction of the Supreme Court* § 384, at 772-773 (noting, in reference to *Isenberg*, that "to hold that such a maneuver tolled the time for Supreme Court review would be to permit losing parties to attack highest state court judgments with baseless charges of fraud in the procurement at any time after their entry, thus for practical purposes nullifying the time limit on review"); *cf. Matton Steamboat Co.* v. *Murphy*, 319 U.S. 412, 415 (1943) (per curiam) ("Would-be appellants could prolong indefinitely the appeal period, by making application to one judge within the three months and upon its denial by applying successively to other judges even after the prescribed time for appeal had ended.").

Neither of those conditions is present here. Petitioner did not engage in seriatim or untimely filings, but rather filed a single timely petition for certiorari in order to exhaust intermediate appeals as required by federal law. And petitioner can hardly be accused of trying to game the system to prolong the appellate process when, unlike in the cases upon which respondent relies, the event that arguably created uncertainty about the filing deadline in this Court (i) was not an action by petitioner but enactment of a statute by Congress, and (ii) occurred after petitioner had filed and

the court of appeals had granted his one post-judgment petition.[4]

2. In these respects, a better analogy is to this Court's practice under 28 U.S.C. § 1257, since both that statute and the Organic Act at the time the Guam Supreme Court rendered its judgment required exhaustion of intermediate appeals before seeking review by this Court. Under § 1257, this Court has accepted a number of cases for review in which a state high court had initially issued a writ of certiorari or agreed to exercise other discretionary review, but then dismissed the writ as improvidently granted without elaboration. That practice supports petitioner here because in those cases, unlike in the successive and untimely petition cases, even when it is unclear whether the state high courts considered the merits of the underlying judgments, the timing of the filings indicates that this Court treated its deadline as running from the date of the high court dismissals.[5]

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[4] Respondent suggests, in the alternative (Br. 24 n.6), that the tolling effect of the Ninth Circuit's grant of certiorari in this case should be considered to have terminated when the Ninth Circuit handed down its decision in *Santos* v. *Guam*, 436 F.3d 1051 (9th Cir. 2006), in which the Ninth Circuit addressed the effect of P.L. 108-378 on pending appeals. But if the grant of certiorari tolled the running of the clock, then it certainly did so until the writ of certiorari was dismissed, since it was not until that dismissal that the possibility of the Ninth Circuit's altering the parties' rights was eliminated. The Ninth Circuit made clear that the writ remained pending when it "resubmitted" this case after issuing the *Santos* decision (Pet. App. 51a), and the court might have distinguished *Santos*: this case had not received even one level of appellate review in the Guam system, it presents separation-of-powers concerns not involved in *Santos*, and, as the *Santos* decision itself noted, the Ninth Circuit had previously recognized a "manifest injustice" exception to the application of jurisdiction-stripping statutes to pending cases, *see Santos*, 436 F.3d at 1053-1054 (discussing *Gioda* v. *Saipan Stevedoring Co.*, 885 F.2d 625 (9th Cir. 1988)).

[5] *See, e.g.*, *Pennsylvania* v. *Finley*, 481 U.S. 551 (1987) (reviewing the merits of a Pennsylvania Superior Court decision concerning post-conviction rights issued June 22, 1984, where the Pennsylvania Supreme Court dismissed a discretionary appeal as improvidently granted on April 23, 1986, and a petition for writ of certiorari to this Court was filed thereafter); *Belknap, Inc.* v. *Hale*, 463 U.S. 491 (1983) (reviewing the merits of a decision by the Kentucky Court of Appeals issued on April 24, 1981,

Moreover, respondent's contention regarding the effect of deliberations by a court that ultimately decides it does not have jurisdiction would bar many parties from seeking review by this Court under § 1257. As respondent himself notes (Br. 19-20 n.5), this Court has held that petitioners must seek review from state high courts before invoking this Court's jurisdiction unless it is absolutely clear as a matter of settled state law that the state high court lacks jurisdiction over the case. Respondent's purported "rule" would thus create a Catch-22, since petitioners who seek the required review but obtain a negative ruling from a state high court would then often be barred from appealing to this Court on timeliness grounds.

B. Respondent's Proposed Alternative Routes To Review By This Court Are Impractical

Respondent's suggestions that petitioner should have filed a "protective" certiorari petition with this Court before the court of appeals issued its decision or requested that the Ninth Circuit vacate the Guam Supreme Court's judgment in order to restart this Court's 90-day filing clock only highlight the unreasonableness of respondent's position. A rule that would encourage (or in fact require) protective filings would serve neither this Court nor litigants well, for it would foster uncertainty and needless expenditure of judicial resources. *See, e.g., Washington* v. *Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 149-150 (1980)

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where the Kentucky Supreme Court dismissed review as improvidently granted on February 16, 1982, and a petition for writ of certiorari to this Court was filed thereafter); *Ramah Navajo Sch. Bd.* v. *Bureau of Revenue*, 458 U.S. 832 (1982) (reviewing the merits of a New Mexico Court of Appeals decision issued July 1, 1980, where court denied rehearing on July 11, 1980, the New Mexico Supreme Court quashed its writ of certiorari as improvidently granted on March 30, 1981, and a notice of appeal and amended notice of appeal were filed with this Court thereafter); *Orr* v. *Orr*, 440 U.S. 268 (1979) (reviewing the merits of a decision by the Alabama Civil Court of Appeals issued on March 16, 1977, where rehearing was denied on April 12, 1977; the Alabama Supreme Court quashed its writ of certiorari as improvidently granted on November 10, 1977; and a notice of appeal was filed with this Court thereafter).

(adopting rule to minimize protective filings under 28 U.S.C. § 2101); *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 515 (1967) (adopting rule to minimize protective filings under statutes creating limited waivers of statutory immunity). As the D.C. Circuit has noted, rules requiring protective filings bring with them a "whole train of unnecessary consequences . . . : the [agency] and other parties may be called upon to respond and oppose the motion for review; when the [agency] acts, the petition for judicial review must be amended to bring the petition up to date." *Outland* v. *Civil Aeronautics Bd.*, 284 F.2d 224, 228 (D.C. Cir. 1960).[6]

Respondent's proposed rule that appellate filing clocks are not suspended when a lower court evaluates the effect of an intervening change in a jurisdictional statute would be particularly wasteful of this Court's resources, since it would create a significant risk that "a judgment of a [lower] court susceptible of being reviewed by this court would ... be open at the same time to the power of a [lower] court to review and reverse," if the lower court ultimately determines that its jurisdiction remains intact. *Andrews* v. *Virginian Ry. Co.*, 248 U.S. 272, 275 (1919).[7]

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[6] This Court has repeatedly cited *Outland* with approval, *see, e.g.*, *ICC* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 285 (1987); *American Farm Lines* v. *Black Ball Freight Serv.*, 397 U.S. 532, 541 (1970); *Civil Aeronautics Bd.* v. *Delta Air Lines, Inc.*, 367 U.S. 316, 326-327 (1961), and has further endorsed the D.C. Circuit's judicial-economy rationale, *see, e.g.*, *Stone* v. *INS*, 514 U.S. 386, 391-392 (1995) (quoting directly from *Outland* in setting out the "policy supporting the nonfinality rule," but finding it did not apply under an unusual provision of the Immigration and Nationality Act).

Respondent's related suggestion (Br. 27 n.8) that petitioner should have filed a petition for certiorari before judgment under 28 U.S.C. § 2101(e)—which under this Court's rules may be granted only "upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court," S. Ct. R. 11—would function only to impose an unnecessary additional burden on litigants and on the Court.

[7] The decisions respondent cites on this score (Br. 27) all concern review of decisions of three-judge district courts. Were this Court to adopt its procedures for handling appeals from those courts to this case, as re-

Respondent's suggestion that petitioner should have asked the Ninth Circuit to vacate the Guam Supreme Court's judgment in order to restart the clock under § 2101(c) is plainly at odds with respondent's assertion that P.L. 108-378 immediately stripped the Ninth Circuit of jurisdiction over this case. In addition, it ignores this Court's general rule that "[t]he time for applying for certiorari will not be tolled when it appears that the lower court ... amended its order solely for the purpose of extending that time." *Missouri* v. *Jenkins*, 495 U.S. 33, 49 (1990).[8]

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spondent advocates, the Court would proceed to decide the jurisdictional issue upon receipt of the petition—without the benefit of briefing and a decision by the lower court that would be simultaneously considering the same issues—in order to determine whether the petition should be dismissed. *See, e.g., Wilentz* v. *Sovereign Camp, W.O.W.*, 306 U.S. 573, 579-582 (1939). Such a procedure may be unavoidable under a statutory scheme in which certain direct appeals of right lie with this Court, but there is no reason to invite such waste of this Court's resources in other contexts. Alternatively, if the Court simply delays any consideration of the petition until the lower court issues its ruling, the protective filing would truly constitute "a redundant slip of paper" "devoid of any sound supporting rationale." *Confederated Tribes*, 447 U.S. at 150.

[8] It is again telling that respondent (Br. 27-28) relies exclusively on precedents concerning appeals from three-judge district courts, which were largely abolished in 1976 because of widespread dissatisfaction with the burdens they imposed on the federal judiciary, including this Court. *See generally* 17 Wright & Miller, *Federal Practice & Procedure* §§ 4234, 4235 (2d ed. 1998). In particular, the right of direct appeal to this Court created such an enormous workload that this Court began to issue "a bewildering and constantly changing variety of rules on what orders were directly appealable to it and what were reviewable in the courts of appeals." *Id.* The resulting system was "so complex as to be virtually beyond belief," even to federal jurisdiction specialists. *Id.* To mitigate the impacts of this system, the Court adopted the practice of vacating and remanding judgments (over which it entirely lacked direct appellate jurisdiction because they should not have been heard by three-judge courts in the first instance) to the original court for re-entry of judgment in order to restart the clock for seeking review from the court of appeals. The precise origin and extent of the Court's authority for this practice is unclear, and it is rarely exercised today. Moreover, post-1976 decisions have specifically resisted attempts to invoke this practice in other contexts. *See, e.g., Donovan* v. *Richland County Ass'n for Retarded Citizens*, 454 U.S. 389, 390-391. (1982).

C. Petitioner's Filings In Other Cases Are Consistent With His Position Here

Finally, the positions adopted by petitioner in *Santos* v. *Guam* and two other cases mentioned by respondent are in no way inconsistent with his conduct in this case.

In *Santos*, a criminal case, petitioner Attorney General did not seek additional review of the conviction by any appellate court; rather, the defendant did. When the Ninth Circuit requested supplemental briefing on the effect of the October 2004 amendment of the Guam Organic Act in P.L. 108-378, petitioner's brief spent four paragraphs outlining arguments that, under *Bruner* v. *United States*, 343 U.S. 112 (1952), the statute divested the Ninth Circuit of jurisdiction over pending appeals. That discussion was preceded, however, by a note explaining that attempts to apply statutes retroactively may be impermissible where they involve "the impairment of a vested right." Br. 2. The brief then spent seven pages following the *Bruner* discussion explaining why P.L. 108-378 could be understood to have affected the substantive or vested rights of parties engaged in pending litigation, and thus why P.L. 108-378 should not be interpreted to deprive the Ninth Circuit of jurisdiction over pending appeals. Petitioner explained that such parties could be considered to have been substantively prejudiced if P.L. 108-378 were read to eliminate Ninth Circuit review over pending cases because, in light of this Court's limited docket, such a reading would effectively foreclose the possibility of judicial review beyond the Supreme Court of Guam. Br. 7. Notably, petitioner did not assert that pending litigants would be barred from seeking Supreme Court review, but rather that the vast majority of cases simply would not meet this Court's certiorari criteria.[9]

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[9] Petitioner's filing of certiorari petitions with this Court in *Guam* v. *Pacificare Health Insurance Co. of Micronesia, Inc.*, No. 04-1074, and *Moylan* v. *A.B. Won Pat Guam International Airport Authority*, No. 04-1480, was also consistent with his position in this case (and with the position he advocated in *Santos* concerning cases pending before the Ninth

II. THE GUAM SUPREME COURT'S INTERPRETATION OF THE ORGANIC ACT'S DEBT LIMIT IS ERRONEOUS

A. The Guam Supreme Court's Interpretation Is Contrary To The Organic Act's Text And Purpose

1. Revealingly, respondent waits until page 44 of his brief to concede grudgingly that "'[t]he starting point for our interpretation of a statute is always its language.'" Even then, despite acknowledging the canon that every word should be given some meaning, respondent simply fails to explain why the word "tax" appears in Guam's debt-limitation proviso. If Congress had intended to base the debt ceiling on the full value of property regardless of how the Guam government's property tax system was structured, it could simply have used the phrase "aggregate valuation."[10] Instead, it included the qualifier "tax," with the evident purpose of tying the level of permissible indebtedness to the valuation of property used to generate property

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Circuit). The judgments at issue in those cases, unlike the one here, did not become final, even initially, until after P.L. 108-378's effective date of October 30, 2004. The Guam Supreme Court's judgment in *Pacificare* was handed down on September 20, 2004, but a timely petition for rehearing by that court was not denied until November 11, 2004. The Guam Supreme Court's judgment in *A.B. Won Pat* issued on February 8, 2005. Thus, when petitioner had to decide whether to seek review of those judgments, it was clear that this Court, rather than the Ninth Circuit, was the court to which a certiorari petition should be directed. No similar clarity existed about the fate of judgments, like the one at issue here (and the one at issue in *Santos*), that had already been accepted for review by the Ninth Circuit well before P.L. 108-387 was enacted. Whatever petitioner said in passing in his *Santos* brief about cases still pending in the Guam courts is irrelevant to this case, which was already before the Ninth Circuit.

[10] *Cf. Board of Educ.* v. *Passey*, 246 P.2d 1078, 1079 (Utah 1952); *Halsey & Co.* v. *City of Belle Plaine*, 104 N.W. 494, 495-497 (Iowa 1905); *Hansen* v. *City of Hoquiam*, 163 P.391, 392 (Wash. 1917). Contrary to respondent's argument (Br. 43-44), *Passey*, *Halsey*, and *Hansen* all focused on the specific language of their state debt limitations as referring to the "value of the taxable property." Here, Congress modified Guam's debt limitation to focus specifically on "aggregate *tax* valuation."

tax revenues—however that tax valuation system is structured by local officials.[11]

2. Respondent's primary argument (Br. 32-34) is that Congress "*precisely*" and "purpose[fully]" limited borrowing "to some percentage of the aggregate *assessed* value of taxable property" in certain territories, but not in others (including Guam) (emphasis in original). Yet he articulates no rationale why Congress would have intended such a strange result. And he identifies no indication that Congress recognized such a contrast or expected different valuation measures to be used for debt limitation and for property taxation. In fact, a review of territorial debt-limitation provisos demonstrates that while Congress used different phrasings over time, it consistently advanced two broader goals: restraining borrowing to prudent levels and linking territorial debt caps to local property taxation systems, however those systems were structured in individual territories.[12] Petitioner's interpretation promotes both of these goals by requiring

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[11] Respondent's argument (Br. 44) about the significance of the Organic Act's language authorizing the Guam Legislature to provide for "[t]axes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions," 48 U.S.C. § 1423a, provides no support for his proposed interpretation. "Assessments, as distinguished from other kinds of taxation, are those special and local impositions upon the property in the immediate vicinity of municipal improvements which are necessary to pay for the improvement and are laid with reference to the special benefit which the property is supposed to have derived therefrom." 14 McQuillin, *The Law of Municipal Corporations* § 38.01 (3d ed. 2005). Thus, "[t]axes and assessments" refers to distinct revenue streams, as do all of the other items listed. *See, e.g.*, *Beecham* v. *United States*, 511 U.S. 368, 371 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). Respondent would render this language superfluous (and ungrammatical) by reading it to create "two separate powers, to tax and to assess," relating to the *same* revenue stream.

[12] *Cf. Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 343 n.3 (2005) (refusing to apply the presumption that Congress intends differences in language to carry different meanings where the record shows "*numerous* changes that are attributable to nothing more than stylistic preference" (emphasis in original)).

territorial officials to compare apples to apples (*i.e.*, using the same valuation that generates property tax revenues to calculate debt limits). Respondent's interpretation, by contrast, would lead to anomalous results that cannot be squared with congressional purposes.

Respondent's failure to identify any statutory or legislative history recognizing the contrast in the wording or operation of debt-limitation provisions that he emphasizes is telling given Congress's numerous debt-limitation enactments. It is striking, for example, that both the 56th Congress (1899-1901) and the 81st Congress (1949-1951) enacted provisions limiting certain territories' debt to a percentage of "assessed value" or "assessed valuation" (Hawaii and the Virgin Islands, respectively) and to "tax valuation" for others (Puerto Rico and Guam, respectively),[13] yet respondent has not identified a single indication that Congress expected the debt-limitation calculations to differ substantively as between the pairs of jurisdictions. Similarly, in the Philippines, the 1902 Organic Act limited municipal borrowing to a specific percentage of "assessed valuation," but Congress revised the debt-limitation provision in the 1916 Organic Act to largely echo the Puerto Rican limitation on debt as a percentage of "aggregate tax valuation."[14] The 1916 committee report notes the new language without suggesting that any

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[13] *Compare* Act of Apr. 30, 1900, ch. 339, § 55, 31 Stat. 141, 151 (limiting Hawaii's territorial debt to "one per centum upon the assessed value of taxable property" annually and "seven per centum of such assessed value" cumulatively); Act of Oct. 27, 1949, ch. 769, § 1, 63 Stat. 940 (limiting the Virgin Islands' territorial debt to "10 per centum of the aggregate assessed valuation of the taxable real property in the islands"); *with* Act of Apr. 12, 1900, ch. 191, § 38, 31 Stat. 77, 86 (limiting Puerto Rico's territorial debt to "seven per centum of the aggregate tax valuation of its property"); Act of Aug. 1, 1950, ch. 512, § 11, 64 Stat. 384, 388 (limiting Guam's territorial debt to "10 per centum of the aggregate tax valuation of the property in Guam").

[14] *Compare* Act of July 1, 1902, ch. 1369, § 66, 32 Stat. 691, 707 (limiting municipal debt to "five per centum of the assessed valuation of the [municipality's] property"), *with* Act of Aug. 29, 1916, ch. 416, § 11, 39 Stat. 545, 548 (limiting same to "seven percentum of the aggregate tax valuation of [the municipality's] property").

substantive change was intended.[15] To the contrary, to the extent that legislative history on one territory's debt provision references other territories' limits, Congress appears to have emphasized their similarities rather than differences.[16]

Respondent relies on snippets of legislative history from the Virgin Islands and Alaska that he claims suggest that "assessed valuation" consistently refers to fractional value and "taxable value" to full value. Respondent's own analysis of the Virgin Islands statutes (Br. 33 n.12), however, undercuts the argument by indicating that those statutes' use of the term "assessed" actually refers to full value, not a fractional, assessed value.[17] Moreover, when Congress enacted the Virgin Islands debt cap in 1949, it changed the proposed language from "aggregate tax valuation" to "aggregate assessed valuation" without indicating that a substantive change was intended. *See* H.R. Rep. No. 81-682 (1949); S. Rep. No. 81-1152 (1949) Accordingly, the Virgin Islands statute does not appear to reflect a "purpose[ful]" decision by Congress to restrict debt limits based on "aggregate assessed valuation" to fractional value, while mandating that other territories' limits (such as Guam's) be based on full value.

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[15] *See* H.R. Rep. No. 64-499, pt. 1 at 12 (1916).

[16] *See, e.g.*, S. Rep. No. 94-433, at 84 (1976) (noting the inclusion of a debt limitation based on "aggregate assessed valuation" in the Northern Mariana Islands' Constitution and providing cites to "[s]imilar provisions" for Virgin Islands, Guam, and Puerto Rico, without noting that the latter two provisions reference "aggregate tax valuation"); S. Rep. No. 81-1152, at 1-2 (1949) (noting in connection with Virgin Islands legislation that "Congress in the past has granted similar authority to the local governments and to municipalities in Hawaii, Alaska, and Puerto Rico. This bill contemplates no change in congressional policy.").

[17] Specifically, as respondent himself notes (Br. 32-33 & n.12), the Virgin Islands property tax law enacted in 1936 mandated that taxes "shall be computed on the basis of the actual value of such property" and set a default tax rate of 1.25% on such "assessed value" until such time as the island's municipalities enacted conforming laws of their own. 48 U.S.C. §§ 1401a-1401b. Accordingly, there was no distinction between assessed and actual value at the time that Congress enacted the 1949 statute authorizing the territorial and municipal governments to incur debt not in excess of 10% of "aggregate assessed valuation."

Similarly, as to Alaska, in light of the fact that its Second Organic Act specifically required that for taxation purposes "assessments shall be according to the actual value thereof,"[18] it is hardly surprising that a 1936 committee report discussing legislation authorizing Alaskan municipalities to incur debt up to 10% of "aggregate taxable value" of property describes the debt cap as "a limitation of 10 percent of the total value of the taxable property." H.R. Rep. No. 74-2290, at 1 (1936) (discussing Pub. L. No. 74-626, § 1, 49 Stat. 1388 (1936)). Although respondent places great significance on the report's statement that the Alaskan statute was "in harmony" with Puerto Rico's debt limitation, this comment is consistent with petitioner's interpretation. In light of the fact that Congress had not *required* Puerto Rico to use an actual valuation system, the debt limitations are most naturally read "in harmony" if they are simply construed to require that the valuation used to generate property tax revenues be used for purposes of debt-limitation calculations as well—however that valuation is calculated—rather than to require use of full valuation *per se*.[19]

Thus, respondent fails to account for the fact that the Virgin Islands and Alaska were the only territories out of

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[18] Act of Aug. 24, 1912, ch. 387, § 9, 37 Stat. 512, 515 (dictating that property taxation "assessments shall be according to the actual value thereof" and capping taxation by territorial and municipal governments at specified percentages "of the assessed valuation of property").

[19] Puerto Rico, like Guam, apparently had no pre-existing property-tax system at the time Congress first capped its debts at a percentage of "aggregate tax valuation" (although Puerto Rico later went on to adopt an actual valuation system). Act of Apr. 12, 1900, ch. 191, §§ 38, 40, 31 Stat. 86; S. Doc. No. 56-147, at 26, 39-40, 77, 94-95 (1900); S. Doc. No. 57-77 (1901) (reprinting C.B. 5, §§ 1, 8 (Jan. 31, 1901)); *Downes* v. *Bidwell*, 18 U.S. 244, 284 (1901). Accordingly, even if the 1936 Alaskan report is construed as suggesting that Alaska's debt limitations, like Puerto Rico's, would be based on actual valuation, such a statement does not indicate that Congress intended the phrase "aggregate tax valuation" to mandate such a result. It might also be noted that, given that the Puerto Rican provision refers to "aggregate tax valuation" rather than "aggregate taxable value," the comment supports petitioner's argument that Congress did not intend minor variations in language to have substantive impact.

the larger group in which Congress had previously dictated specific federal requirements regarding property taxation. When read in proper context, the legislative history on which respondent relies does not support a sharp distinction between "taxable value" and "assessed valuation," but rather simply reflects congressional attempts to describe and harmonize the operation of the debt limitations with those specific territories' pre-existing, federally mandated property tax statutes.

Indeed, that Congress left all of the territories cited by respondent other than the Virgin Islands and Alaska free to adopt either fractional or actual valuation systems illustrates further why respondent's interpretation is unworkable and inconsistent with Congress's overall goals.[20] Had all of the unrestricted territories subsequently decided to adopt fractional-valuation systems, respondent's interpretation would have required Hawaii and the Northern Mariana Islands to calculate their debt limit based on the assessed, fractional value subject to taxation, while basing the Puerto Rico and Guam limits on full value. Respondent offers no explanation why Congress would have intended that perverse outcome.

The broader history of territorial debt caps, then, does not support respondent's claim that "tax" and "assessed"

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[20] Fractional valuation had been used at least as early as 1820, *see, e.g.*, *E. Ingraham Co.* v. *Town & City of Bristol*, 132 A.2d 563, 565 (Conn. 1957), but attracted new attention starting in the late nineteenth century as States struggled with the fact that local assessors had been arbitrarily underassessing property values for decades despite formal actual-valuation requirements. Adopting formal fractional-valuation systems was viewed as a compromise that accounted for various political pressures that contributed to underassessment, while promoting transparency and political accountability by requiring an explicit, uniform standard. By 1950, numerous jurisdictions had authorized fractional assessment systems. *See generally Louisville & Nashville R.R. Co.* v. *Coulter*, 131 F. 282, 290-291 (E.D. Ky. 1903), *rev'd on other grounds*, 196 U.S. 599 (1905); *Passey*, 246 P.2d at 1079; Jensen, *Property Taxation in the United States* 35-43 (1931); Shannon, *Conflict between State Assessment Law and Local Assessment Practice*, in *Property Taxation USA* 39, 40-45 (R. Lindholm ed., 1967).

have been used as contrasting terms, one referring to full value and the other to fractional value. Petitioner's interpretation is the most natural because it simply requires territorial officials to use the same valuation from which property taxes are generated to calculate their debt limitations, regardless of how those valuation systems are structured.

3. Respondent's observation that the Guam government derives much of its revenue from sources other than property taxes speaks to the wisdom (or folly) of basing debt limitations on property valuation generally—regardless of whether the specific metric is full property value or fractional, assessed value.

Congress was well aware that Guam would have substantial revenue from non-property tax sources, since the Organic Act itself provided for the Guam government to receive "[a]ll customs duties and Federal income taxes derived from Guam, the proceeds of all taxes collected under the internal-revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam," as well as authorizing sales taxes, license fees, and various other royalties and concessions. Act of Aug. 1, 1950, ch. 512, §§ 11, 30, 64 Stat. 384, 388, 392.[21] Moreover, the distinction respondent draws between municipal governments being highly dependent on property taxes and state governments relying on other sources of revenue was already clear by 1950.[22] Congress nonetheless chose to base Guam's debt limitation on the "aggregate tax valuation of the property in Guam," just as it had done for the various other territories cited by respon-

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[21] In 1977, Congress authorized the Guam legislature to levy an additional 10% income tax on residents, Pub. L. No. 95-134, § 203(c), 91 Stat. 1159-1162 (Oct. 15, 1977) (codified at 48 U.S.C. § 1421i(a)), but did not, it might be noted, revise the debt cap to permit additional borrowing.

[22] *See, e.g.*, Newcomer, *The Decline of the General Property Tax*, 6 Nat'l Tax J. 38, 39-40 (1953) (reporting that in 1950 less than 2% of state tax revenue and 89% of local tax revenue derived from property taxes).

dent, because doing so promotes political accountability and transparency. The Guam legislature is free to fund its debt from other sources or to change its fractional system in a way that would increase its debt cap, but it cannot do the latter without changing the basic valuation used for property tax purposes such that current taxpayers can hold lawmakers appropriately accountable.[23] Without such limitations, the legislature could excessively postpone the enactment of taxes needed to keep the government within its means, thereby imposing the burden for current spending on future taxpayers. To the extent that respondent questions the wisdom of this policy and its implications for Guam's current economic recovery, it is for Congress rather than this Court to amend the Organic Act.[24]

B. The Guam Supreme Court's Decision Is Not Entitled To Deference

Unable to defend the Guam Supreme Court's interpretation using the usual tools of statutory construction, re-

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[23] Respondent's argument (Br. 42-43) that the Guam government could raise the borrowing limit by increasing the assessment rate while lowering the tax rate ignores the political psychology that leads jurisdictions all around the United States to keep assessment rates lower than full appraised value. That widespread practice, no doubt familiar to members of Congress, reflects voters' preference for assessment rates of less than 100%, perhaps because voters are both skeptical of the willingness of legislatures to lower tax rates as property values increase and sensitive to the risk that rising property values may lead to unrealized gains yet current-year tax burdens.

[24] Respondent pleads (Br. 45-47) that the borrowing at issue in this case would benefit the Guam economy. It may be open to question whether "taking extraordinary financial obligations, such as borrowing in the bond markets to fulfill existing obligations," Bank of Hawaii, *Guam Economic Report* 5 (Oct. 2003), is wise fiscal policy, particularly when undertaken by a government that suffers from "material weaknesses in internal controls over financial operations" and has been unable to achieve clean audit reports, GAO, *U.S. Insular Areas: Economic, Fiscal, and Financial Accountability Challenges* 30 (Dec. 2006). Notably, while the recent GAO report documents several challenges to Guam's economy, debt-limitation constraints are nowhere mentioned. In any event, whether the borrowing at issue would be beneficial is irrelevant to the question of legal permissibility that this Court must resolve.

spondent insists that this Court must nonetheless defer to that interpretation because the issue concerns Guam alone. No such deference is warranted.

This Court has made clear that Article III courts owe deference to territorial courts' interpretations of local law, not federal law. *See Waialua Agric. Co.* v. *Christian*, 305 U.S. 91, 109 (1938) (territorial court's interpretation of Hawaiian law concerning validity of actions taken by incompetent to convey or assign property rights); *Matos* v. *Hermanos*, 300 U.S. 429, 432 (1937) (territorial supreme court's interpretation of territorial law mandating whether sales contract was voidable rather than void); *Santa Fe Cent. Ry. Co.* v. *Friday*, 232 U.S. 694, 700 (1914) (territorial court's interpretation of territorial statutes defining jurisdiction of territorial courts). This Court has expressly recognized the distinction between decisions of territorial courts interpreting local law and decisions interpreting federal law, explaining that "great deference must be paid to local decisions ... *[w]here the Constitution or statutes of the United States [are] not involved.*" *De Castro* v. *Board of Comm'rs*, 322 U.S. 451, 457-458 (1944) (emphasis added); *cf. United States* v. *Fullard-Leo*, 331 U.S. 256, 259, 269 (1947) ("[w]hile in matters of local law the federal courts defer to decisions of the territorial courts, we are dealing here with a problem of federal law" (footnote omitted)). When, as here, a federal question is presented, no such deference is called for.[25]

Ignoring this distinction, respondent relies on three decisions to support his claim for deference, principally *Pernell* v. *Southall Realty*, 416 U.S. 363 (1974).[26] But *Pernell* affords

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[25] The courts of appeals have followed the same policy in excercising certiorari jurisdiction over decisions of territorial supreme courts. *See, e.g., Gutierrez* v. *Pangelinan*, 276 F.3d 539, 546 (9th Cir. 2002) (deferring to the Guam Supreme Court on Guam law, but reviewing federal law rulings *de novo*); *Campose* v. *Central Cambalache, Inc.*, 157 F.2d 43, 44 (1st Cir. 1946) (per curiam) (same with regard to Puerto Rico).

[26] Respondent simply mischaracterizes *Santa Fe Cent. Ry. Co.* v. *Friday*, 232 U.S. 694 (1914), as turning on deference on an issue of federal law. The determination to which this Court gave deference was the New

no basis for deference to the Guam court on the issue presented in this case. First, *Pernell* recognized a policy of deference only with respect to decisions of the courts of the District of Columbia, not those of territorial courts. The precedents upon which *Pernell* relied all concerned the District, and this Court has never cited *Pernell* as supporting deference to any court outside the District.[27] Second, the statute at issue in *Pernell* was one enacted by Congress in its role as legislature for the District (pursuant to Art. I, § 8, cl. 17), not in its role as the national legislature. Thus, although the law was enacted by Congress, it was local in the relevant sense. The law at issue here, far from being local,

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Mexico Supreme Court's interpretation of a territorial statute defining the jurisdiction of certain territorial courts. Part of the basis for the New Mexico court's interpretation, and a reason that this Court thought it "plainly right," *id.* at 700, was that a contrary interpretation would have brought the local statute into conflict with the New Mexico Organic Act. But it was the proper interpretation of the territorial statute that was in question, as the precedent upon which this Court relied in deferring also makes plain. The Court cited *Phoenix Ry. Co.* v. *Landis*, 231 U.S. 578, 579-580 (1913), which re-stated, with citations to many earlier decisions, the principle that this Court "is disposed to accept the construction which the territorial court has placed upon *a local statute*" (emphasis added).

Respondent also mischaracterizes *Waialua Agric. Co.* v. *Christian*, 305 U.S. 91, 109 (1938), which addressed issues of common law concerning "the validity of a lease, a contract for maintenance, and a deed," *id.* at 93, not questions of federal statutory law. *Waialua*'s references to "general" as well as "local" law, as its footnotes make clear, *see id.* at 109 & nn.37-38, were references to the "general" federal common law recognized by this Court before its decision in *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1937). In the context of the case, then, those references are best understood as references simply to common, as distinct from statutory, law. *Waialua* certainly offers no support for the claim that this Court defers to territorial courts' interpretations of federal statutes.

[27] Respondent thus is simply wrong when he asserts (Br. 38 n.15) that *Pernell* "relied upon a long-standing rule of deference" to territorial courts' interpretations of territorial law. On the contrary, *Pernell* nowhere mentions the territorial deference cases, and those cases have not mentioned *Pernell*. One other decision cited by respondent, *Hall* v. *C & P Tel. Co.*, 793 F.2d 1354 (D.C. Cir. 1986), is simply an application of *Pernell* to a worker's compensation statute for the District that incorporated many provisions from the equivalent general federal statute.

in the sense of being enacted either by the Guam legislature or by Congress as a substitute for the Guam legislature, was enacted by Congress in its role as constitution-maker for the territory. The Organic Act defines and constrains the powers of the Guam government. It would therefore be particularly inappropriate to defer to the decisions of the territory's supreme court interpreting the very law designed to limit the powers of the territory's government.[28]

CONCLUSION

For the reasons given above and in petitioner's opening brief, the judgment of the Supreme Court of Guam should be reversed.

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[28] Moreover, while *Pernell* mentioned the 1970 overhaul of the District's court system to make it more clearly resemble a state court system by subjecting decisions of the D.C. Court of Appeals to direct review in this Court as "lend[ing] additional support" to its "longstanding practice of" of deferring to "the courts of the District on local law matters," 416 U.S. at 369, a comparison on this score only cuts against deference here. For at the time the judgment under review was handed down (in 2003), Congress had yet to make the equivalent changes of establishing the Guam Supreme Court as a co-equal branch of the Guam government and shifting direct review of its decisions from the court of appeals to this Court. Those changes were made only in 2004.

While, as respondent notes (Br. 37 n.13), then-Judge Kennedy, speaking for the Ninth Circuit Judicial Council, endorsed the proposed legislation that in 1984 would authorize the Guam legislature to create a territorial appellate court, he also strongly objected to the proposed limitation of the Ninth Circuit's review to federal questions. *1983 Omnibus Territories: Hearing Before the S. Subcomm. on Energy Conservation and Supply of the Comm. Energy & Natural Res.* 371-372 (Oct. 6, 1983) (statement of Anthony Kennedy). The Kennedy/Judicial Council insistence that the Ninth Circuit's review of the territorial appellate court be plenary ultimately prevailed.

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